

1 IN THE UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF MISSOURI  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, )  
5 )  
6 Plaintiff, ) Case No.  
7 vs. ) 17-00326-01-CR-W-SRB  
8 )  
9 DAVID R. BUIE, )  
10 )  
11 Defendant. )  
12 )

13 JURY TRIAL - VOLUME I OF II  
14 BEFORE THE HONORABLE STEPHEN R. BOUGH  
15 MONDAY, MAY 7, 2018  
16 KANSAS CITY, MISSOURI

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MONDAY, MAY 7, 2018

(The following proceedings were had out of the presence of the jury:)

THE COURT: Good morning, everyone.

MS. MOORE: Good morning.

MR. O'CONNOR: Morning, Judge.

THE COURT: I understand you've got a motion and an offer of proof.

MS. MOORE: That's correct, Your Honor.

THE COURT: Pretty quick offer of proof?

MS. MOORE: Yes, uh-huh.

THE COURT: Okay.

MS. MOORE: If I may proceed.

THE COURT: You may. He or she's just welcome to sit there.

MS. MOORE: Thank you, Your Honor.

Based on the 404(b) ruling from the court that we received on Friday, the --

THE COURT: Well, maybe let's do this a little out of order then. Let me tell you my thought process behind my order which will relate to your motion which may relate to the offer of proof which may relate to the evidence that Mr. O'Connor's seeking to be admitted.

My thought is that after viewing the evidence or a portion of the evidence, that this is a pretty close call.

1 The jury's going to be able to listen to both arguments and  
2 decide under the standards whether this was obscene or not.  
3 What I don't want this decision to be is based upon a lot of  
4 gruesome things in this guy's history that would, you know, as  
5 soon as you hear that he's convicted for possessing child  
6 pornography or looking at some of the things that are -- some  
7 of the things he admitted that he's having difficulty not  
8 being attracted to minor children, that that seems -- would  
9 seem to automatically prejudice a jury in my mind, that any  
10 probative value to it would be outweighed by the prejudicial  
11 value.

12 And so I really wanted this to kind of be a clean  
13 trial on these facts alone. So Mr. O'Connor's desire to use  
14 community standards or comparable stuff by an investigator is  
15 off that thought process, and the other things that you're  
16 about to talk to are off that thought process as well. I  
17 wanted to make sure I was clear about what I was doing here  
18 and what my hope for this trial would be so that at least you  
19 know.

20 And I don't know if Mr. O'Connor wants to open up  
21 the door. At least it's opening up the door in my mind that  
22 if we get into a whole bunch of other stuff, that this isn't  
23 -- this is beyond just the facts of this case where we're  
24 looking at comparable evidence. Maybe that opens up the door  
25 that we start looking at other stuff because the case law that

1 you provided around the circuit, Ms. Moore, there's lots of  
2 circuits that have approved allowing in prior pattern of  
3 practice evidence to show that, hey, the fact that you were  
4 convicted for child pornography or that you admitted that you  
5 were attracted to minor females, that's been allowed in. That  
6 type of evidence has been allowed in.

7 So at least in my mind, Mr. O'Connor, starting to  
8 bring in other evidence outside of the facts in this case gets  
9 away from my 404(b) ruling. At least it's my thought process  
10 behind it, which could be straight down the middle. So that  
11 was my little speech, more of an explanation, about why I came  
12 to what I did to figure out before you go into whatever where  
13 we're at. So both of you look like you're ready to say  
14 something profound.

15 MR. O'CONNOR: Go ahead, Teresa.

16 MS. MOORE: Well, Your Honor, I -- related to the  
17 ruling, the court indicated the defendant's prior conviction  
18 may be admissible if it can be shown that the prior conviction  
19 involved anime or animated cartoons.

20 THE COURT: And the reason I put that in there,  
21 again, and I've got this honesty problem, when I looked up  
22 stuff on Mr. Buie, it appears that there was some issue of  
23 anime in the past, but I couldn't figure that out by looking  
24 at prior pleas.

25 MS. MOORE: So what I have this morning -- his prior

1 conviction, he pled to a one-count information. It was an  
2 agreed-upon plea agreement. I do have, and I've provided this  
3 information to Mr. O'Connor, is that his plea agreement that  
4 he pled to did indicate in the factual basis section of the  
5 plea agreement, the technician, and I'm quoting from the plea  
6 agreement and I'll present it to the court, the technician  
7 found images of what he believed to be adult and child  
8 pornography as well as animated illustrations of child  
9 pornography. And that's on page 2 of the signed plea  
10 agreement in Case No. 10-00090. And that's the prior  
11 conviction.

12 In addition to that, the presentence investigation,  
13 and, again, these facts were not objected to in that prior  
14 conviction, on -- in paragraph 4 of the presentence  
15 investigation indicated basically the same thing. The  
16 technician found images of what he believed to be adult  
17 pornography, child pornography, and animated illustrations of  
18 child pornography. I think sometimes -- and if I may approach  
19 with both these court documents --

20 THE COURT: Thank you, ma'am.

21 MS. MOORE: Thank you.

22 So I guess my point is I think sometimes child  
23 obscenity or obscene visual representation of children  
24 engaging in sexually explicit conduct or animated child  
25 pornography, technically we're talking about something that



1 isn't photographs or images of actual children but are  
2 drawings, cartoons, something of that nature kind of using a  
3 different variety of terms.

4 Based on the defendant's prior plea --

5 THE COURT: Which was the paragraph under the plea  
6 agreement you wanted me to see?

7 MS. MOORE: It was paragraph 3 and it's on page 2.

8 THE COURT: Okay. Go ahead.

9 MS. MOORE: So I think that the government can show  
10 based on these court documents that in fact the defendant's  
11 prior conviction did involve animated images of children  
12 engaged in sexually explicit conduct, and Detective Kim  
13 Shirley-Williams, who's also a task force officer with the  
14 FBI, was actually the investigator who investigated that prior  
15 case.

16 And she can testify that from her recollection of  
17 the case and the investigation, there were images of what she  
18 would describe as incest between an adult and a child engaging  
19 in sexually explicit conduct and also some Japanese anime  
20 images of children engaged in sexually explicit conduct. So  
21 understanding that the conviction itself was to a one-count  
22 information, the case did involve similar conduct as this  
23 case.

24 So based on the court's ruling that considered the  
25 prior conviction may be admissible if there was -- it involved

1 any anime or animated cartoons, the government would offer  
2 that proof to the court, and if you want to hear from  
3 Detective Shirley-Williams --

4 THE COURT: I don't need to hear from her. You're  
5 welcome if you think it's needed for a record to put it on.  
6 Let's see what Mr. O'Connor says.

7 MR. O'CONNOR: Judge, I'd stipulate. I know  
8 Kimberly Williams. She would testify to the facts that  
9 Ms. Moore's alluded to. I would just say at the time of the  
10 plea, the plea was possession of child pornography. There was  
11 no judicial determination of whether or not obscenity existed  
12 at the time, and it may have been part of what was recovered,  
13 but it was not what the defendant pled guilty to. I think the  
14 court's ruling has addressed that.

15 THE COURT: It kind of brings up a bigger question  
16 in my mind as I'm plowing through these jury instructions and  
17 getting ready. You said, Mr. O'Connor, that he pled guilty to  
18 possessing child pornography. I'm assuming that this is --  
19 he's charged with the crime of possession of child obscenity.

20 MR. O'CONNOR: Correct.

21 THE COURT: Is there really a -- are we just calling  
22 it two different things? Is child pornography and child  
23 obscenity two different things, or are they really the same  
24 thing?

25 MS. MOORE: Your Honor, they are two different

1 statutes. Possession of child pornography is -- typically we  
2 charge it under 18 United States Code 2252(a)(4), and child  
3 pornography is essentially visual depictions of actual minors  
4 engaged in sexually explicit conduct.

5 THE COURT: But the statute for child obscenity says  
6 shall be a violation of 2252A, right?

7 MS. MOORE: The punishment is the same as 2252A.  
8 Actually 2252 -- it's B, I think, 2. The punishment would be  
9 the same including the punishment for someone who has a prior  
10 conviction for one of the --

11 THE COURT: So at least in the government's mind,  
12 they're two different criminal statutes --

13 MS. MOORE: Right. The 1456A, child obscenity or  
14 visual depictions, I think there's different terms you can  
15 even use, includes the cartoons, the drawings, anime,  
16 sculptures, paintings. So they are two different statutes  
17 under two different chapters.

18 THE COURT: Do you agree with that, Mr. O'Connor?

19 MR. O'CONNOR: I do.

20 THE COURT: And so your argument to continue to keep  
21 out this evidence is that, despite when I said that if the  
22 prior conviction may be admissible if it involves child  
23 animation, that he only pled guilty to possessing child  
24 pornography?

25 MR. O'CONNOR: And I would argue they had the choice

1 at the time to file the other charge and they did not.

2 THE COURT: You feel like -- I'm pondering up here.  
3 Do you feel you need to get anything additional out of the  
4 officer other than what you've said? Is there something --

5 MS. MOORE: The only thing -- other point I would  
6 add is that the plea agreement references a technician who  
7 found images of child obscenity, and I think the same thing is  
8 referenced in the presentence investigation. Detective Kim  
9 Shirley-Williams would also testify that there were some  
10 actual physical printed documents that were received from a  
11 family member purporting to be -- they were in a folder with  
12 Mr. Buie's other information that was child obscenity that was  
13 printed. And do you have any recollection of how many items?  
14 She does not recall the exact number of printed documents.

15 THE COURT: And is -- would it be your intention  
16 that Officer Williams would go on the stand just to testify  
17 that this occurred?

18 MS. MOORE: That's correct. That's correct, Your  
19 Honor, that -- based on the plea agreement. The government  
20 would essentially offer the plea agreement and at least a  
21 portion of the presentence investigation pursuant to either  
22 901 Rule of Evidence or 902, and then also ask Detective  
23 Shirley-Williams if during the course of the prior  
24 investigation, they discovered child obscenity issues or --  
25 depictions and essentially that involved a child with an adult

1 purported to be a parent having sexual contact and then the  
2 Japanese anime images.

3 THE COURT: Is there anything in this case that -- a  
4 couple of times now you've brought up incest. Is there  
5 anything about this anime that makes --

6 MS. MOORE: The -- I would say the entire items  
7 possessed referenced sex between particularly boys and their  
8 mothers.

9 THE COURT: So that -- the part I saw last week at  
10 the pretrial conference, as you know, I just briefly looked at  
11 it, that in your mind would be a mother and her son?

12 MS. MOORE: Right. And in fact there's -- all of  
13 the -- all of the images contained -- they're like comic  
14 books, colored comic books, and they all talk about -- the  
15 kids call the parent mom. For instance, on the first page,  
16 the dad is laying, like, passed out next to the couch, and the  
17 little boy is saying, he's -- it's small. Something about to  
18 get up, let it go, mom, and the mom says -- or the woman  
19 purported to be the mom -- You're a coward. But all of the --  
20 all of the cartoons, the younger person represents that the  
21 person they're having sex with they call them mom.

22 THE COURT: Okay. Mr. O'Connor, I kind of get the  
23 feeling that your angle on this trial is that under the jury  
24 instructions, either that they didn't depict minors or they  
25 weren't obscene.

1           MR. O'CONNOR: That they did not depict minors. I  
2 don't think there's probably any question that they're  
3 obscene.

4           THE COURT: You're just going to say this individual  
5 in this comic strip is not a minor?

6           MR. O'CONNOR: Correct.

7           THE COURT: And --

8           MR. O'CONNOR: It's arguable whether they are.

9           THE COURT: You're going to argue it. And you're  
10 just going to admit obscene?

11          MR. O'CONNOR: Yes.

12          THE COURT: And I guess that's where the incest  
13 plays in is obscenity.

14          MR. O'CONNOR: Correct.

15          THE COURT: You want to tell me anything about the  
16 comparable evidence?

17          MR. O'CONNOR: Judge, I don't think -- I mean, I  
18 understand the argument about the comparable evidence, but I'm  
19 not making -- my sole argument is -- goes to the element of --  
20 there's six elements in this charge, and the element that the  
21 visual depictions depict minors engaging in sex, that's why I  
22 take -- I think if I try to get into five, that may open the  
23 door on the other stuff, but whether or not the visual  
24 depiction depicted minors, that I believe that whether they  
25 depicted minors engaged in sexually explicit conduct, that's

1     why I have these other magazines I was going to ask the court  
2     to look at this morning.

3             I just -- my sole argument is whether or not these  
4     are minors or whether it is really adult pornography packaged  
5     to look like minors engaged in sex. And so if you can walk  
6     into a bookstore and buy similar material, then that is a -- I  
7     think the jury should be able to know that without just  
8     looking at a picture and trying to make a determination.  
9     That's further evidence at least from these photographs I'm  
10    going to ask you to look at. So I'm keying in totally on the  
11    fact that these are not minors involved in sexual activity.

12            THE COURT: Well, let's see them. Do you have them?

13            MR. O'CONNOR: Yes. They're right here. I didn't  
14    -- I was going to have you mark them, but I can show them to  
15    you and mark them. I've kind of put stickies on the ones that  
16    I believe may -- so the question is whether or not that person  
17    depicted is a minor or not under the law.

18            THE COURT: So your investigator went to an adult  
19    bookstore and purchased comic books?

20            MR. O'CONNOR: And, so, Judge, so you know, those  
21    were in a package. They're sealed. You can only see what's  
22    on the outside. You have to buy it. Then you cut it open,  
23    and then you see what's inside.

24            THE COURT: And, I mean -- and so, like, the one  
25    entitled "Super Sexxx" with three Xs -- have you seen these?

1 MS. MOORE: I have, Your Honor, yes.

2 THE COURT: -- that depict an adult women in a  
3 treehouse with kids at the base of the treehouse on -- by a  
4 bicycle, and the only captioned words on the front say, "What  
5 do you mean, no boys allowed?" And there's play dolls and  
6 what appears to be an adult woman basically undressed. You've  
7 got some sticky notes around.

8 MR. O'CONNOR: That's the ones I put on that I would  
9 argue that you cannot tell the age of the individual, whether  
10 they're 18 or less. Therefore, the photographs that they have  
11 in trying to determine whether someone's 18, I mean, that's  
12 what the bottom line is, is do they depict individuals under  
13 the age of 18? And I would argue that you can look at those  
14 photographs, the ones I've marked, and say that that person  
15 appears to be under the age of 18. It's a jury determination.

16 THE COURT: Right. I mean, this could be -- just as  
17 easily be possession of the child obscenity as well, right?

18 MR. O'CONNOR: I guess it could be.

19 THE COURT: It's being sold and the U.S. Attorney  
20 hasn't known about it yet, and you could only find it at one  
21 store.

22 MR. O'CONNOR: Right.

23 THE COURT: My concern about it if I let you make  
24 that argument, I'm in essence saying that this is legal.

25 MR. O'CONNOR: I guess what I'm saying is if you can  
16



1 purchase it legally, right now you can walk into a store and  
2 purchase it legally in an adult bookstore, then how can it be  
3 illegal or child pornography? But I understand what you're  
4 saying is it's by whose standards of which that's judged.

5 THE COURT: Right.

6 MR. O'CONNOR: I think it's relevant to the fact  
7 that some of my client's -- his search engines were "barely  
8 legal." There's obviously stuff out there that would appear  
9 by appearance, because that's what they're going to be  
10 arguing, the appearance of someone to be less than the age of  
11 18. So I believe that it could be argued that there are  
12 people that appear to be less than 18 --

13 THE COURT: I hope this one goes to the Supreme  
14 Court. I hope I make enough controversial rulings that the  
15 Eighth Circuit can do whatever. You guys can take this to the  
16 Supreme Court because "barely legal" to me is repulsive.

17 MR. O'CONNOR: Correct.

18 THE COURT: I mean, the hard part for me is I've got  
19 a 19-year-old daughter. So sitting here having this debate  
20 is, you know, for the most part disgusting and -- you can mark  
21 any of those that you want for -- because I'm not going to let  
22 you use them because I'm not going to put the stamp of this  
23 court that that is legal when if I think I had to decide if  
24 that was a visual depiction -- or element number two is that  
25 the visual depictions depict minors engaging in sexually

1 explicit conduct.

2           The comparable that you -- or lack of comparable  
3 that you gave me, to me is a visual depiction of minors  
4 engaging in sexually explicit conduct. You can't put a little  
5 kid by the base of a treehouse with a bicycle and do anything  
6 in my mind but conjure up images of minors.

7           MR. O'CONNOR: And that's my point is I think the  
8 argument we're going to make at the end of this is this  
9 statute is unconstitutional. It's vague, it's overbroad. You  
10 don't know what it really addresses someone's conduct.

11           So someone today can walk into a store and buy that  
12 and be subject to being -- sitting here before you; so that's  
13 why I think that this statute is -- and we'll argue that later  
14 at the end of the case. But it's --

15           THE COURT: Scalia has already passed away, God rest  
16 his soul, and so we'll see if Gorsuch picks up his mantle or  
17 not on that one.

18           MR. O'CONNOR: Judge, in the morning before we  
19 close, if I could make an offer of proof. I've got an FBI  
20 agent.

21           THE COURT: I imagine he's a prior FBI agent.

22           MR. O'CONNOR: Prior FBI agent. I would like to  
23 make an offer of proof so that we can preserve that. Other  
24 than that, I don't have anything else.

25           THE COURT: Okay. I'll keep pondering your evidence

1 on the prior convictions and other incidents that I ruled upon  
2 in my Order No. 31 and look more closely at the plea agreement  
3 and the PSI.

4 MR. O'CONNOR: Judge, I would have basically three  
5 further arguments to that before we get going. I would argue,  
6 one, Ms. Williams is not an endorsed witness. Two, there's no  
7 endorsed experts; so I believe she would be giving expert  
8 testimony. Three, the prior obscenity, if it was, was never  
9 judicially determined; and so I would want the court to see  
10 that material if he was inclined to find that it was similar  
11 or somehow to be engaged here.

12 So I -- I don't want us to get going and then we're  
13 up against those kind of issues. I'm not asking for a  
14 continuance because I want to get the case going.

15 THE COURT: Sure. And I don't -- I imagine  
16 Ms. Moore could just somehow do it without Ms. Williams,  
17 right? If I decided to allow in his prior convictions,  
18 there's more than one way to do that, but --

19 MS. MOORE: Well, if I may, Your Honor, you know,  
20 typically most cases, the prior conviction comes in but not  
21 the underlying facts. So certainly I think that Ms. --  
22 Detective Shirley-Williams' testimony or proffer that we've  
23 made regarding what she would testify to is relevant for the  
24 court's consideration. Depending on how the court rules if  
25 the prior conviction is admissible, which I purport that it

1 is, because, according to the elements, the defendant  
2 knowingly possessed these items, and that prior conviction  
3 certainly shows that the defendant knowingly possessed child  
4 pornography which is similar in that it depicts images of  
5 children engaged in sexually explicit conduct, which we also  
6 have to show in this case that these depictions depicted  
7 children engaged in sexually explicit conduct.

8           So we think that certainly that prior conviction is  
9 very relevant to his knowledge and intent; that this was no  
10 mistake; that this was no accident; that he was specifically  
11 looking for these images; and that he possessed these images  
12 knowingly. Again, we think that prior conviction is very  
13 relevant.

14           Certainly I would -- if the court rules that we are  
15 able to present that prior conviction, we could present also  
16 the prior plea agreement or the prior conviction could be  
17 stipulated to. That would not necessarily require the  
18 testimony of Detective Shirley-Williams.

19           There are a couple other things I would like to  
20 address this morning.

21           THE COURT: Before we get off here, real quick,  
22 Mr. O'Connor, I understand you're just going to be arguing  
23 element number two, that the visual depictions depict minors  
24 engaging in sexually explicit conduct.

25           MR. O'CONNOR: Correct.

1 THE COURT: You're going to agree to all the other  
2 elements.

3 MS. MOORE: Well, element five is that the defendant  
4 knew at the time of possession the visual depictions depicted  
5 minors.

6 MR. O'CONNOR: That's an element that the state --  
7 the government has to prove. It has to prove it. I'm not  
8 arguing it. My whole argument here is whether or not those  
9 are minors explicitly engaged in sex, period.

10 THE COURT: I'm just trying to figure out as we --  
11 as I'm trying to figure out what's more probative than  
12 prejudicial, what we're really going to be having our trial  
13 about.

14 MS. MOORE: I guess I don't see how -- it's a bit  
15 confusing because then you're admitting that he knew the  
16 visual depictions depicted minors, but you're going to argue  
17 to the jury that they were not minors?

18 MR. O'CONNOR: I'm not admitting anything, but my --  
19 but I think, if I'm answering the court's question correctly,  
20 my entire focus is what is -- is whether those photographs are  
21 minors engaged in sex because you have the head of a minor and  
22 the body of an adult. So is it the whole person, half a  
23 person? That's my argument.

24 THE COURT: Uh-huh. Has your client decided if he's  
25 going to testify?

1           MR. O'CONNOR: He is not testifying. We have an  
2 instruction.

3           MS. MOORE: And that actually brings up another  
4 thing that I wanted to mention this morning is, well, the --  
5 when we submitted the instructions, Mr. O'Connor wanted to  
6 submit a separate instruction under what was formerly No.  
7 4.01. That instruction has become encompassed in Instruction  
8 No. 3.05, and so referring to the instructions, it's 18B is  
9 Instruction No. 3.05, and then Mr. O'Connor submitted  
10 Instruction No. 4.01, which is Instruction 19.

11           Essentially the language is exactly the same in the  
12 last paragraph of Instruction 18B and Instruction 19. So I  
13 would -- if Mr. O'Connor wants a separate instruction, then I  
14 would ask that that paragraph be removed from Instruction No.  
15 3.05. I think we'll have time to talk about that, but I  
16 wanted to get that on the record now so that we're aware of  
17 it.

18           MR. O'CONNOR: I just think I want a separate  
19 instruction --

20           THE COURT: What's the language we're actually  
21 talking about? I've got a clean copy.

22           MR. O'CONNOR: No. 19 is my instruction.

23           THE COURT: What are the words in essence?

24           MR. O'CONNOR: There's no burden upon the defendant  
25 to prove that he is innocent.

1 THE COURT: Okay. If you want it separate, then --

2 MS. MOORE: I think the -- well, I'm confident the  
3 pattern instructions have indicated 4.01 is not used anymore.  
4 That language is encompassed in the burden of proof  
5 instruction. However, I think courts have given it  
6 separately, and then I would just ask for it to be removed  
7 from the burden of proof instruction.

8 MR. O'CONNOR: That's fine.

9 THE COURT: Yep. We'll get it out, put it separate  
10 so it's not in there twice.

11 MS. MOORE: The second thing I wanted to mention is  
12 actually that TFO Albers has to testify at a detention hearing  
13 at 10:45; so while we're selecting the jury, he's going to  
14 have to step out for a few minutes if that's okay.

15 THE COURT: That's okay. Hopefully it's here in  
16 this courthouse.

17 MS. MOORE: It is. I think that's all I have for  
18 this morning.

19 MR. O'CONNOR: Just one other matter, Judge, until  
20 you make that ruling, the Probation Officer Hille, I would ask  
21 that if the court's ruling is going to stand where the other  
22 evidence is not going to be allowed, then I would ask that she  
23 be referred to as a federal officer and not a federal  
24 probation officer because saying she's a federal probation  
25 officer obviously --

1 THE COURT: She's agreeable.

2 MS. MOORE: That's fine.

3 MR. O'CONNOR: Perfect.

4 THE COURT: The ruling stands until otherwise.

5 MR. O'CONNOR: The court's ruling?

6 THE COURT: The court's ruling stands until

7 otherwise noted. Anything else while we're waiting on the

8 jury?

9 MR. O'CONNOR: No, sir.

10 THE COURT: Nothing else, Ms. Moore?

11 MS. MOORE: No, Your Honor.

12 THE COURT: At this point I've got a friend who's

13 attending part of the trial today. I know we're all pretty

14 concerned about who's watching what evidence and how that's

15 coming up. I'm not going to alter that presentation of the

16 evidence, but given the highly sensitive nature of this case,

17 we have somebody sitting in the courtroom. I just wanted to

18 be totally honest with you.

19 MR. O'CONNOR: Judge, Luke Callahan is in our

20 office. He's just going to sit with me to pick the jury.

21 Then he's going to leave.

22 THE COURT: Okay.

23 MS. MOORE: Is it okay if Detective Shirley-Williams

24 is?

25 THE COURT: Oh, sure. I'm not kicking anybody out.

24



1 I'm just trying to be honest. All right.

2 Just for clarity, the government's motion to  
3 preclude the introduction of comparable material is granted.  
4 We'll see you when we get the jury.

5 (A recess was taken.)

6 (Voir dire filed separately.)

7 (The following proceedings were had out of the  
8 presence of the jury:)

9 THE COURT: Ms. Moore, anything before opening?

10 MS. MOORE: No, Your Honor.

11 THE COURT: Mr. O'Connor?

12 MR. O'CONNOR: No, Judge. I won't be making an  
13 opening statement. So when she gets finished, we're just  
14 going to the evidence.

15 MS. MOORE: Very good. I guess there is something.  
16 Sorry. Do you -- does it matter if I use this podium, or  
17 should I use the one with the microphone?

18 THE COURT: If you use that one, you'll be fine  
19 because the microphone is right there, and you're right by  
20 Gayle so she'll be able to hear you.

21 MS. MOORE: Thank you, Your Honor.

22 THE COURT: Wherever you're most comfortable.

23 (The following proceedings were had in the presence  
24 of the jury:)

25 THE COURT: Welcome back, ladies and gentlemen of

1 the jury. As we discussed, we'll do some jury instructions,  
2 have opening statement, proceed with the witnesses.

3 (Instructions read.)

4 THE COURT: Ms. Moore, opening statement.

5 MS. MOORE: Thank you, Your Honor. May it please  
6 the court.

7 THE COURT: Please proceed.

8 MS. MOORE: Counselor.

9 GOVERNMENT'S OPENING STATEMENT

10 MS. MOORE: Debbie Atwood was at work, a normal day,  
11 and she noticed a stack of unclaimed documents on a printer;  
12 so she picked up the documents, turned them over, and was  
13 surprised and upset by what she saw. Debbie Atwood will tell  
14 you that when she turned those pages over, she saw what she  
15 will describe as colored drawings of a boy who appeared to be  
16 between the ages of 6 to 10 engaging in numerous sexual acts  
17 with a woman the captions described as mom.

18 Debbie was upset by that. She works at the  
19 Mid-Continent Public Library, the Blue Ridge branch, which is  
20 located here in the Western District of Missouri, and when she  
21 was at work that day, when she turned those over, she figured  
22 out she needed to determine where these images came from. And  
23 she'll tell you she didn't look through the whole stack. She  
24 looked through a few, was very upset, because in her  
25 estimation they depicted children. And so she wanted to find

1 out how these images got on that printer.

2           So Debbie started -- she was supervising at that  
3 time, and so she started talking with the other employees at  
4 the library and realized the normal computer printer --  
5 there's a computer section at the library that has a number of  
6 computers library patrons can use -- was down that day. It  
7 wasn't working. So anyone who wanted to print had to print  
8 their -- select print, then go up to the front desk to have  
9 their print job released, pay for the print job at the front  
10 desk, and pick up the print job at the front desk.

11           It turns out that the printer at the front desk had  
12 run out of toner during a large print job, and so the  
13 individual who came to the front desk paid for all the images  
14 he was printing, which was \$30. She'll tell you that it was  
15 50 cents a page to print a colored image, but because the  
16 toner had run out, he didn't obtain all his images, and he  
17 left the library.

18           When library staff figured out that the toner needed  
19 to be changed, they changed the toner, and then the print job  
20 continued. So Debbie Atwood was able to go into the computer  
21 and see what print jobs had been run that day. And there was  
22 only one large print job that was color prints. She was able  
23 to look at the user, the library user, who printed that job,  
24 and determined it was associated with Mr. Buie's library card.

25           And you'll hear about how the computers are set up

1 at the library. This particular library is a pretty busy  
2 branch, and they have a number of computers, and any library  
3 patron can come in and use the computer.

4 When the patron signs onto the computer, they have  
5 to put in their library card number, and they have to put in  
6 their date of birth. And then they have to click a box that  
7 says "I accept," and that's the library terms of use for the  
8 computer.

9 If anyone's used a computer, often there's terms of  
10 use that you have to accept before you can use certain  
11 computers. In this case the acceptable terms of use policy  
12 also talks about that the individuals can't go to  
13 inappropriate content. So the user has to put in their  
14 library card number, their date of birth, and click "I  
15 accept."

16 Now, the library, to protect the privacy of their  
17 patrons, which is very important to them, they're not able to  
18 see on the computers what individuals are looking at on the  
19 computers. The computers are in the open; so if they walk by,  
20 they may see something on a screen. But they don't have a  
21 system set up in place where they can be on a central computer  
22 and see what everybody's looking at. That would violate their  
23 users' privacy. So the library doesn't know what websites  
24 people are going to.

25 Debbie Atwood will tell you that once she determined

1 it was Mr. Buie who had printed these items, she collected  
2 them, and she notified her supervisor. What had actually  
3 happened is Debbie went back in to reprint everything Mr. Buie  
4 had printed so she had all of the documents he had printed,  
5 even the ones he took home, and then she provided all of those  
6 to her supervisor, and it was for a couple reasons.

7 One reason was Mr. Buie had violated the library's  
8 terms of acceptable use for the computer, and when someone  
9 does that, they can be banned from computer use for 30 days.  
10 So they need to report that to the administrative offices of  
11 the library system. But the other reason she turned  
12 everything over to her supervisor is because the images  
13 depicted what she describes as children, and she was concerned  
14 that a crime was being violated.

15 Using her reason and common sense, Debbie Atwood  
16 went home after work that night, and it just so happens that  
17 her husband is a Kansas City, Missouri, police officer. And  
18 Debbie will tell you I felt like I needed to report it to the  
19 police, and my husband's a police officer. So that's who I  
20 reported it to.

21 Her husband, Police Officer Mitchell Atwood, will  
22 come in and testify and he'll tell you that I did take the  
23 report from my wife. He'll say that's my job. That's what I  
24 do. I report crime. So he took the report. He contacted a  
25 detective unit, and after the report was made, forwarded that

1 to a detective unit for follow-up investigation.

2           The branch manager of the library, Gerry Haile,  
3 Geraldine Haile, will come in and explain to you what she did.  
4 She was actually at a meeting at the administrative offices  
5 when these images were located. When she got back, she was  
6 provided the images. The library staff explained what had  
7 happened to her, and she took custody of the images, and she  
8 then took them to the South Patrol Division of the Kansas  
9 City, Missouri, Police Department and made a police report  
10 about the images and turned all the images over to the Kansas  
11 City, Missouri, Police Department.

12           Debbie Atwood is also going to tell you that when  
13 she was able to determine it was the defendant who printed the  
14 images, that brought to mind another incident that she had had  
15 with the defendant. She'll tell you that in June of 2017,  
16 before this occurred -- this was in July, July 11th through  
17 13th of 2017. In June of 2017, Mr. Buie was in the library,  
18 and he was a regular patron at that library.

19           Ms. Atwood was supervising at that time, and one of  
20 the library pages came up to her and said they had walked  
21 through the computer area and were concerned about someone  
22 using -- displaying inappropriate material on the computer.  
23 Ms. Atwood will tell you that what she can do, although she  
24 can't look and see what everyone's doing on their computers,  
25 she can send instant messages to computer users.

1           And so she will tell you she sent Mr. Buie an  
2 instant message that said essentially you've been reported for  
3 looking at inappropriate material. Shortly after that,  
4 Mr. Buie got up and left the library. When Debbie Atwood  
5 realized that Mr. Buie was the one who printed these images in  
6 July, she also recalled that event with Mr. Buie.

7           So after the report was made and after Gerry Haile  
8 turned all the images over to the Kansas City, Missouri,  
9 Police Department, a federal officer who has regular contact  
10 with Mr. Buie was forwarded the police reports, and this  
11 officer is Sandra Hille. And she will come in and tell you  
12 that as soon as she received the police report about Mr. Buie  
13 and these inappropriate images that display minors engaged in  
14 sexually explicit conduct with adults, she went to Mr. Buie's  
15 home, and that was on July 13th of 2017.

16           Mr. Buie lives in the Western District of Missouri  
17 as well. She went to his home with her partner, and they  
18 asked to search Mr. Buie's home, and he did provide consent.  
19 They found a stack of printed images on Mr. Buie's kitchen  
20 table, and Sandra Hille will tell you that the images depicted  
21 in her estimation and what she believes are minors engaging in  
22 sexually explicit conduct with adults, and that the adults  
23 were called mom in some of the images.

24           Sandra Hille will tell you she questioned Mr. Buie  
25 about the events that led up to this and what had been going

1 on. When she talked to Mr. Buie in questioning, Mr. Buie told  
2 her that since March of 2017, he had been traveling to various  
3 libraries in the Kansas City metropolitan area for the purpose  
4 of viewing depictions of what was referred to as child  
5 pornography anime.

6 Mr. Buie also told Ms. Hille that he would print or  
7 attempt to print the child pornography anime using the  
8 library's printers. Mr. Buie told Sandra Hille that he  
9 estimated on average he would visit libraries once a week for  
10 that purpose.

11 Mr. Buie told Ms. Hille that on one occasion in the  
12 spring of 2017, he was printing child pornography anime at the  
13 Red Bridge branch of the Mid-Continent Public Library and he  
14 was asked to leave that branch after another patron complained  
15 about seeing him viewing depictions of children engaging in  
16 sexually explicit conduct. Mr. Buie admitted to viewing the  
17 child pornography anime and that he had attempted to print it.

18 Sandra Hille collected all the images from  
19 Mr. Buie's kitchen table, and she contacted Task Force Officer  
20 David Albers and went to the FBI to turn those images over to  
21 David Albers. David Albers will come in, and he's going to  
22 tell you that he obtained the images that were from Mr. Buie's  
23 home, and he also obtained the images that were printed at the  
24 library. And he was able to compare them and found several of  
25 the images in Mr. Buie's home were identical to the ones that



1 he had printed in the library on the 11th of July.

2 David Albers will tell you that in his training and  
3 experience as an investigator who investigates crimes against  
4 children and child exploitation cases, he viewed those images,  
5 and it's his belief that they represent children engaged in  
6 sexually explicit conduct with adults.

7 At the close of all the evidence, the government is  
8 going to ask you to find this defendant guilty of possession  
9 of child obscenity. Thank you.

10 THE COURT: Ms. Moore, would you like to call your  
11 first witness, ma'am.

12 MS. MOORE: Thank you, Your Honor. The government  
13 calls Debbie Atwood.

14 DEBBIE ATWOOD, being duly sworn by the courtroom deputy,  
15 testified:

16 DIRECT EXAMINATION BY MS. MOORE:

17 Q Good afternoon. Please state your name for the record.

18 A Debbie Atwood.

19 Q And how do you spell your last name?

20 A A-t-w-o-o-d.

21 Q In July of 2017, where were you employed?

22 A Mid-Continent Public Library, Blue Ridge branch.

23 Q Where is that located?

24 A 9253 Blue Ridge Boulevard, Kansas City, Missouri.

25 Q And you're no longer employed with the library; is that

1 correct?

2 A That is correct.

3 Q Is that pretty recent?

4 A Yes.

5 Q How long were you employed with the library?

6 A A little over 16 years.

7 Q What were your duties with the library?

8 A My job title most recently was technology associate. I  
9 did a lot of customer-facing-customer service and worked full  
10 time 40 hours a week. I did education, computer training,  
11 early literacy, and reading stories to children. A lot of  
12 outreach to schools and different groups.

13 Q Thank you. What -- you said you worked 40 hours a week.  
14 Did you have a typical work shift or different -- kind of a  
15 staggered work shift?

16 A I did have a typical work shift. Monday and Tuesday I  
17 worked 8 a.m. to 5 p.m. Wednesday I worked noon to nine.  
18 Thursday I worked 8 a.m. to 5 p.m., and then Fridays my  
19 schedule varied. I either worked 8 to 5, 9 to 6, or I was  
20 off, and then I worked one Saturday a month, 8 a.m. to 5 p.m,  
21 And then we had an hour change, and then it was nine to six,  
22 and then sometimes Sundays one to five.

23 Q What were the normal hours that the library was open or  
24 is -- I assume it's still open. I know you don't work there.  
25 But what are the normal hours at the library?

1       A       They are Monday through Thursday 9 a.m. to 9 p.m.;  
2       Friday -- let me think -- 9 a.m. to 6 p.m; Saturday 10 a.m. to  
3       5 p.m., maybe six, ten to six; and then Sunday one to five.

4       Q       Thank you. I want to talk to you about events that  
5       occurred at the library related to the defendant in this case,  
6       David Buie, and I want to go through a little bit of the  
7       library's setup with you to help with your testimony. So I'm  
8       going to show you some exhibits.

9               MS. MOORE: If I may approach, Your Honor.

10              THE COURT: Yes, you may.

11       Q       (BY MS. MOORE) And I'm just going to ask you to review  
12       these, Exhibits 4, 5, 6, 7, 10, 11, and 12, and if you can  
13       just -- you don't have to describe them in detail, but just  
14       generally describe what they are.

15       A       Okay. Exhibit 4 is a picture of the front of the  
16       library as viewed from our parking lot.

17               Exhibit 5 is a view of the interior of the library  
18       as if you had just walked through the front door. So it's a  
19       view of a display and our service deck, and you can also see  
20       the computers from that view.

21               Exhibit 6 is also a view from the front door.  
22       However, you can see more of the left-hand side of the  
23       library, which includes the children's area, our program  
24       space, and a self-serve return station.

25               Exhibit 10 shows our public computer area, part of

1 it. We do have public computers in other sections of the  
2 library, but this shows computers numbers 1 through 24  
3 stationed through four different computer -- round computer  
4 tables, six at each table. Exhibit No. 10 shows our service  
5 desk. It is a U-shaped desk with a detached island behind it.  
6 There are three chairs at that desk. Two of them are staffed  
7 at any given hour that we are open. The third one is usually  
8 open for roaming.

9 Exhibit 11 is also another view of our service desk.  
10 It shows the station that we refer to as the roamer station,  
11 which faces the children's area, and also shows the front  
12 station which faces our front entrance door.

13 And Exhibit 12 shows the roamer station again which  
14 also faces the children's area.

15 Q Are these exhibits fair and accurate depictions of the  
16 Blue Ridge branch library?

17 A Yes, they are.

18 Q And then Exhibit No. 13, is that a floor plan of the  
19 Blue Ridge branch library?

20 A Yes, it is. It's one that I'm very familiar with.

21 Q Is it a fair and accurate depiction of how the library  
22 is set up?

23 A It most certainly is.

24 Q All right. Thank you very much.

25 MS. MOORE: Your Honor, at this time the government

1 would move for admission of Exhibits 4, 5, 6, 7, 10, 11, 12,  
2 and 13.

3 MR. O'CONNOR: No objection.

4 THE COURT: All of those are admitted.

5 MS. MOORE: And may I publish them to the jury, Your  
6 Honor?

7 THE COURT: Yes, you may.

8 Q (BY MS. MOORE) Okay. So this is the Blue Ridge public  
9 library; is that correct?

10 A That is correct.

11 Q Can you give us a little information about the library.  
12 Is it used often? Is it a pretty busy place?

13 A We are located in a somewhat urban section of south  
14 Kansas City on a major thoroughfare, Blue Ridge Boulevard. We  
15 are next door to Dobbs Elementary School. We have many  
16 businesses and churches next to us. So we do have people who  
17 come by foot, but we also have a lot of vehicular traffic. We  
18 on any given day, and I'm saying "we" because I just recently  
19 stopped working there, but on any given day, our visitor count  
20 could be anywhere from a few hundred on a day that we're only  
21 open a few hours to seven or eight hundred people on any given  
22 day. So we can be very busy.

23 Q And then, just so the jury can get an idea of how the  
24 library is set up, what does Government's Exhibit No. 5  
25 depict?

1       A       That is what our library branch looks like when you walk  
2 through the entry door, which is the only, you know, way that  
3 the public accesses the Blue Ridge branch. So from there, you  
4 can see some items that are on display. To the right, you can  
5 see some desks where chairs, tables that people can sit and  
6 meet at. You've got our service desk there with a TV that  
7 displays upcoming programs or events, and the service desk is  
8 where the staff are usually at to assist the public.

9       Q       Thank you. And what does Exhibit No. 6 depict?

10      A       That is also a view from the front entrance, except in  
11 that picture you can see a return station. You can also see  
12 the service desk and, again, some items that are on display,  
13 and then you see part of our program area where we would do  
14 early literacy story times, where we would do other  
15 informational programming, and you can also see the children's  
16 area visible from there.

17      Q       So I'm going to show you Exhibit No. 13 now. So when  
18 you walk in the front door of the library, where are the  
19 computers located?

20      A       Okay. The first computers that you would come to when  
21 you walk into the front entrance are to your right. There are  
22 three standup stations that we refer to as express computers.  
23 Customers can use those for ten minutes. They're just meant  
24 for quick things. Immediately to your left when you walk in,  
25 there is what we call a mommy and me station. There are two

1 early literacy computers for children to get on, and then  
2 there is a workstation in between for a parent or a caregiver.

3 If you walk into the entryway and go straight back  
4 on the right-hand side where you see the -- little off on my  
5 geometry -- but the six-sided tables, there's four of them.  
6 There are six computer stations at each table for a total of  
7 24.

8 Q And Government's Exhibit No. 7, what's that depict?

9 A So that is -- that is the four sets of tables with six  
10 computers on each. The sign above saying public computers,  
11 those are wired computers, desktop computers.

12 Q When you say "wired computers," what do you mean?

13 A They're not wifi like a device or a laptop. They're  
14 hard wired into our Internet.

15 Q And so from all of these 24 computers, can users access  
16 the Internet?

17 A Absolutely they can, as long as they have a valid  
18 library card and they know their pin number.

19 Q Are these computers used often?

20 A Yes, they are. In fact, if you look at our -- at the  
21 branch statistics for the Blue Ridge branch, that is the  
22 primary reason why people are visiting that particular branch  
23 is to use the computers.

24 Q So who would be a typical person that would come in,  
25 from your experience, to the library to use the computers

1     there?

2       A     There really is no typical computer use. It could be  
3     anything from somebody who has a computer at home and has run  
4     out of ink in their printer and needs to print something  
5     quickly. It could be somebody who does not have access to  
6     Internet in their home. It could be somebody that's just  
7     taking a break from work and doesn't have time to run home.  
8     They just need to do something really quick. And it could be  
9     somebody who, again, doesn't have computer use in their home  
10    and they come into the library very frequently to use the  
11    computers.

12    Q     So if customers need help with the computers, do you  
13    have staff that can help them with the computers?

14    A     Absolutely. The Blue Ridge branch has trained all of  
15    their staff with the exception of our entry-level pages. All  
16    of our staff are trained and equipped to assist people with  
17    basic computer needs.

18           We also have work study students, an agreement with  
19    Longview Community College, to come and sit -- you can see a  
20    little portion of the table in the lower left-hand corner. We  
21    will have these work study students sitting there to assist  
22    with computer needs when their schedules permit.

23    Q     If a patron wants to use the library computer, are there  
24    rules that have to be followed?

25    A     There certainly are. In order for somebody to be



1 successful in signing in to use a computer, as I mentioned  
2 earlier, they need to have their library card, either their  
3 physical card, or they need to have the card number memorized.  
4 They also need to know what their pin number is, and once they  
5 put that information into the computer, they have a choice of  
6 a filtered or an unfiltered session, and then they must accept  
7 our acceptable use policy. And that policy stipulates the  
8 rules that they must follow in order to use our computers.

9 Q When you say they have the choice of filtered or  
10 unfiltered, explain what that means.

11 A Because of the children's online privacy protection act,  
12 our computers automatically filter out objectionable material  
13 for anyone that's under the age of 18; so that is an automatic  
14 -- that automatically happens. Adults have a choice. They  
15 can choose to have the content filtered or unfiltered.  
16 However, even if they choose to have unfiltered content, our  
17 acceptable use policy still tells them that viewing  
18 objectionable images is prohibited.

19 Q Where is the printer normally located for these 24  
20 computers?

21 A Well, in looking at the picture that's on the screen  
22 right now, the printer would be almost directly across from  
23 that table in the lower left-hand corner. So it is just  
24 slightly out of the viewing range in that picture.

25 Q On -- let me ask -- show you another exhibit. On July  
41

1 11th, 2017, do you know if the library printer for the public  
2 computers was working?

3 A The printer was not working that day.

4 Q I'm going to show you Exhibit No. 10, and what is this?

5 A That is our, what we call, our service desk.

6 Q And is that the main -- is that the only service desk,  
7 the main desk in the library?

8 A That is the main desk where customers are accustomed to  
9 coming to get service, especially if there is no work study  
10 student at that little table over by the public computer area.  
11 And even if somebody is there, customers are used to getting  
12 assistance from library staff anyway. So often they bypass  
13 that person.

14 Q From -- it looks like there's a computer or a couple  
15 computers at this front desk. From those computers, can you  
16 see what individuals are doing on the 24 computers or the  
17 other computers in the library?

18 A From that computer, the information that we have access  
19 to is we can look to see if a computer is in use. We can look  
20 to see the card number of the computer -- who's using that  
21 computer, and I think it will also tell us how much time they  
22 have left in their session. But we cannot see what they are  
23 looking at.

24 Q And what does Government's Exhibit 11 depict?

25 A That is another view of our service desk. That would be

1 as if staff were behind the desk. We are seeing what we call  
2 the front station, which would be facing our entrance doors,  
3 and then another station called the roamer station, which  
4 faces our children's area.

5 Q And then, finally, Government's Exhibit No. 12, what  
6 does that depict?

7 A And that is also our roamer station, which is typically  
8 not staffed. It is an overflow station where -- for times  
9 when we are busy, and we have a buzzer at the desk that will  
10 help notify staff in the back workroom that help is needed on  
11 the floor. And also from that picture, you can see the  
12 printer that staff use out there on the floor. That's not  
13 typically a printer that our customers have access to.

14 Q All right. Now, you indicated that on July 11th of  
15 2017, the printer for patrons was not working. So what would  
16 patrons have to do that day if they wanted to print a job?

17 A If they wanted to print, they would have to come to the  
18 service desk and either let staff know which computer they  
19 were on so we could look up the job, or they would have to  
20 show their library card so that we could look up the job. And  
21 then we would release the print job manually from our  
22 workstation, which would then print at the staff printer.

23 Q And how -- so on July 11th, all print jobs had to come  
24 through this computer -- or printer, excuse me; is that  
25 correct?

1       A       That is correct.

2       Q       So when print jobs came through the printer, was library  
3 staff able to see what the print jobs were?

4       A       What I can tell you is what I did personally as an  
5 employee. Whether or not my other coworkers follow this or  
6 not, I'm not sure, but the library really takes privacy -- we  
7 really respect the privacy of people. And so we really don't  
8 want to see what they have printed.

9               So typically when things come off the printer, I  
10 would hand them face down and I would ask the customer to look  
11 at them and verify that they have everything they were  
12 expecting. And then, of course, there's money that exchanges  
13 because it's 10 cents per page if it's black and white; 50  
14 cents per page if it's in color. So we would have taken the  
15 money before we released the prints.

16      Q       From on this printer, do you know if the documents are  
17 printed face up or face down?

18      A       They are printed face down.

19      Q       So I want to talk to you about this particular print job  
20 that came through on July 11th, 2017. Can you explain what  
21 you were doing and how -- and what you found on this printer.

22      A       Okay. So every hour at the library there is a shift  
23 change. So depending on what staff are doing at any given  
24 time, there might be staff that are already out on the desk.  
25 There might be staff coming from the workroom to take

1     somebody's place out on the desk. It was a shift change time.  
2     I had been in the workroom, and so I was coming to take my  
3     place out on the desk.

4             And it was very clear that things were a little  
5     chaotic. There were lots of people waiting for prints. It  
6     was very busy at the desk, and I noticed that there was a very  
7     sizeable stack of papers on the printer. And I -- a coworker  
8     had told me that the printer was broken, and so jobs were  
9     being printed from the staff printer.

10            And I went over to the printer that we see in the  
11     picture, and I started to lean over to grab the papers that  
12     were on there because I didn't see that there was a customer,  
13     like, waiting for prints. And so I was about to ask what are  
14     these, and a male coworker said, Yeah, you don't -- you don't  
15     want to look at that. And I said, Are you kidding me? And he  
16     said, No. And I said, Well, we can't leave them here because  
17     in the meantime we've got other customers that are coming up  
18     and wanting things to be printed, and I certainly didn't want  
19     to run the risk of handing somebody something that wasn't  
20     appropriate.

21            I had not looked at these yet, but then I leaned  
22     over and I just flipped over the first page to see what it was  
23     and took the whole job off and put it face down on the  
24     computer -- on the desk next to me. And then I got into our  
25     computer system. Our print --

1 Q Can I interrupt you for a minute.

2 A Yes.

3 Q I'm sorry. So when you picked the paper up, the  
4 document up and looked at it, what did you see? Can you  
5 describe it?

6 A Yes. I saw what appeared to be --

7 MR. O'CONNOR: Judge, I have an objection. Can we  
8 approach?

9 (Counsel approached the bench and the following  
10 proceedings were had:)

11 MR. O'CONNOR: I think she can testify to what she  
12 saw, but her opinion of whether or not it was child  
13 pornography, I do not think she can give that opinion. It  
14 invades the province of the jury. It's the whole idea of the  
15 jury to determine whether or not this is child pornography.  
16 It would be no different if I wanted to bring in three people  
17 that looked at the same picture that said I don't think it's  
18 child pornography. It appears to be an adult body on a  
19 child's face.

20 THE COURT: Objection is noted and overruled.

21 MS. MOORE: Thank you.

22 (The proceedings returned to open court.)

23 Q (BY MS. MOORE) All right. Can you please describe what  
24 you saw on that printed page.

25 A Okay. In library terms, we would consider it not comic

1 strip or cartoon but graphic, animated, full color, a  
2 depiction of an adult Caucasian female with blond hair  
3 completely nude from the waist up. That was probably -- took  
4 up on an 8 and a half by 11 piece of paper a pretty big part  
5 of the upper right-hand corner. I don't know if you're  
6 getting that visual with my hands there.

7 But that was really all I needed to see to tell me  
8 that it was a violation of our acceptable use policy. So, as  
9 I said, I put it back face down, took the whole stack off the  
10 printer because I didn't want to leave it there, put it face  
11 down on the desk next to where I was stationed, and then got  
12 into our computer program, were able to look at the print  
13 queue and were able to go into a button that says reprint, and  
14 then from there, I could pinpoint the card number associated  
15 with the job.

16 Because it's library policy that if somebody  
17 violates our acceptable use policy, we make an annotation on  
18 their record, and if they violate it twice, then they are  
19 temporarily barred from computer use for 30 days. So it was  
20 my responsibility to figure out who printed this and make that  
21 annotation on the card.

22 Q Did you -- were you able to determine who printed it?

23 A Yes, I was.

24 Q And do you know who that was?

25 A It was David Buie.

1 Q Did you -- so what did you do next in relation to the  
2 images?

3 A After I discovered that the card number was linked to  
4 that account, I went to the record, the library record by  
5 putting in the card number, and it was at that time when I  
6 noticed that there was a previous AUP violation, one that I  
7 actually gave the same customer just a few weeks earlier. So  
8 I went ahead and I marked the record, and then I took the  
9 whole stack of papers with me into the workroom, which is a  
10 secured area that only library staff go, and I put them face  
11 down on my assistant branch manager's desk.

12 And I said -- I said, I'm not putting these here for  
13 you to look at, because nobody should have to look at them,  
14 but I just want you to know that one of our customers printed  
15 off \$30 worth of inappropriate material. I'm not really sure  
16 what to do with it, but I really don't want to put it in lost  
17 and found. I am not going to call the customer and let him  
18 know that he left without all of his papers. So I suggested  
19 that the material be shredded, and he agreed that that was an  
20 appropriate course of action.

21 Q So tell us a little bit -- you said you had sent -- you  
22 had reported something from a few weeks earlier.

23 A Yes.

24 Q What happened then?

25 A That was -- I don't recall the exact date, but it was in  
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1 June. I want to say it was later in the month, maybe the  
2 27th, 29th. I'm not entirely sure. But it was a Wednesday  
3 night and I was the senior staff person on duty, and one of  
4 our pages, a high school student, came into the workroom and  
5 told me that one of our customers was viewing inappropriate  
6 material on the computer.

7 I asked him what computer the customer was at, and  
8 he said, I don't really recall, do you want me to go out there  
9 and look? And I said, No, I don't want you to be exposed to  
10 that again, but can you describe to me what the customer  
11 looked like? So he gave me a very good description of the  
12 customer. He said he was an older white male with white and  
13 gray hair wearing glasses, and he described the color shirt  
14 that he was wearing as being kind of an orangey, salmon-  
15 colored shirt. And I did recall earlier that evening seeing a  
16 customer that matched that description and knowing that that  
17 customer had been on the computers.

18 So I thanked my coworker, and I told him that I  
19 would check it out myself. And I left the workroom area. I  
20 made a pass around the Internet area, and I noted the  
21 gentleman that was being described and took a glance at his  
22 monitor and noticed that he was not looking at anything at  
23 that particular moment.

24 However, I do trust my coworkers and did not feel  
25 that the coworker would have any reason to tell me it was

1 inappropriate if it wasn't inappropriate. I came back to the  
2 service desk that we see in that picture to whisper to my  
3 other coworkers to let them know that I was getting ready to  
4 send a message directly to that customer's computer kind of  
5 like a chat message. Again, another way to protect privacy  
6 and not have a discussion out in the open air for other  
7 customers to hear.

8 I told them that I was going to send this notice to  
9 the customer to let him know that he had violated our  
10 acceptable use policy and that he was getting an AUP violation  
11 on his record. And, as I was sharing that with my coworkers,  
12 our off-duty officer, Officer Wyatt --

13 Q I'm sorry to interrupt you --

14 A Yes.

15 Q -- at this point. So that was in June?

16 A Yes.

17 Q And you -- so when you received this information, what  
18 steps did you take then? I don't want to interrupt you, but  
19 did you then send that --

20 A I did send -- I sent a message to Mr. Buie after -- like  
21 I said, we can look at the card number that's associated with  
22 the computer session, and we can send direct messages to that  
23 monitor. And I sent him a message telling him essentially  
24 that when he signed up to use the computers, he accepted our  
25 acceptable use policy, and that he was violating it by looking

1 at images that were inappropriate in a public library setting.

2 That was not only corroborated by the page who  
3 brought it to my attention, but an off-duty officer that was  
4 working there that evening also approached and told me that he  
5 also saw inappropriate material on the monitor.

6 Q Shortly after sending that message, did Mr. Buie leave  
7 or what happened?

8 A He did. He -- I would say within five minutes, he  
9 logged off his computer session and then left the library  
10 building.

11 Q Now, so getting back to July 11th, so -- I guess after  
12 that June incident, did you notice Mr. Buie in the library  
13 again?

14 A Yes.

15 Q And getting back to July 11th, you've testified that you  
16 took images into the office and gave them to the assistant  
17 branch manager, and you were going to shred them?

18 A I put them on the corner of his desk just to have a  
19 brief conversation and to get his opinion as to what should be  
20 done with them because it was a large stack of papers. Like I  
21 said, it was a -- I believe Mr. Buie paid \$30 for the job  
22 because it was full color. So that would have been 50 cents a  
23 page, it would have been 60 pages of material.

24 Because of a -- because that printer ran out of  
25 toner in the middle of the job, the prints stopped. That was

1 part that I hadn't shared. The print job stopped and a  
2 coworker handed Mr. Buie the prints that came off, and then  
3 the toner cartridge was replaced, the print job resumed, but  
4 Mr. Buie had already left the building. That is how we came  
5 to be in possession of at least half of the print job.

6 So after my assistant branch manager agreed that  
7 maybe shredding them was the best course of action, I took  
8 them into the branch manager's office. She was not in the  
9 building at the time. She was off-site at a meeting, and she  
10 is the only one who had possession of a shredder, and I began  
11 shredding the pages. In the process of shredding them, I was  
12 shredding them, you know, not looking at the images but with  
13 the images away from me. But then anything that's printed  
14 from the Internet unless it's a Word document or something, it  
15 will print kind of a banner on the bottom of it that tells the  
16 website.

17 And I wanted to look at the page to look to see what  
18 website that was from because I wanted to contact our IT  
19 department and say why can't this be blocked. Like if it's  
20 against our acceptable use policy, you know, why can't we  
21 block this, and when I looked at the banner, I saw that one of  
22 the words in the banner was "incest," and that caused me to  
23 look further at the picture. And it was then that I realized  
24 that it wasn't just inappropriate images. It was a depiction  
25 of a boy who was having -- doing sex acts with his mother, and

1 that brought everything to a whole different level for me.

2 But I continued to shred the entire packet of  
3 information, and then I went back into the workroom and told  
4 my assistant branch manager that, you know, it was a little  
5 bit higher level than what we initially thought and that I was  
6 going to go ahead and do the incident report, which is a  
7 policy that we have whenever there is something that is  
8 behavior related or might cause somebody to lose access to  
9 their library privilege.

10 Q So did you do the incident report?

11 A I did.

12 Q And what did the incident report report essentially?

13 A Well, basically everything that I've just shared, what  
14 happened that day, how we came to be in possession of the  
15 documents, that the documents were shredded. I'm not sure  
16 what else to say about that.

17 Q Okay. No, that's fine. Thank you.

18 When you saw the page or images that you described  
19 as a boy, were you able to just look at the image and in your  
20 view what you saw, how old would you describe the boy to be?

21 MR. O'CONNOR: Judge, same objection.

22 THE COURT: Noted. You may answer.

23 A Thank you. I put the boy at between maybe 6 and 10  
24 years old, and the reason why I say that, it has to do with  
25 stature, the size difference between the adult being depicted

1 and the male child, lack of definition in the shoulders and,  
2 you know, just kind of straight up and down.

3 Q (BY MS. MOORE) Okay. Thank you. So after the incident  
4 report was completed, what happened?

5 A Whenever we submit an incident report and copies of that  
6 automatically go to the senior management team at  
7 Mid-Continent Public Library. So that team is housed at our  
8 headquarters, which is located in Independence.

9 And I believe shortly after that was received by our  
10 director of libraries and senior management team, my assistant  
11 branch manager received a call, and he was asked to direct me  
12 to reprint the entire job. They wanted it as evidence, and  
13 when I say "evidence," it wasn't so much, I think, because the  
14 library planned to take action. It was because they wanted my  
15 branch manager to come back and view the images to see if they  
16 were as bad as I said they were.

17 Q So when the images were reprinted, what did you do with  
18 them?

19 A They were placed in what we call an interoffice  
20 envelope. So it's an envelope about yea tall, and it's got a  
21 string that you seal, seal it with. I placed them in the  
22 envelope, and I put the envelope on my branch manager's desk  
23 for her to come in.

24 Q And who is your branch manager?

25 A Her name is Geraldine Haile.

1 Q After you put the images or depictions on your branch  
2 manager's desk, did you ever see those images again or did you  
3 ever -- I shouldn't say see them again. Have you ever had  
4 them in your possession again?

5 A Thankfully, no.

6 Q So you notified your branch manager. Did you also  
7 notify anybody else about this?

8 A I spoke to my husband about them that evening, yes.

9 Q And what does your husband do for a living?

10 A My husband is a police officer with Kansas City,  
11 Missouri.

12 Q Did you report it to your husband as a police officer?

13 A I think I spoke to him about it mostly as a subject  
14 matter expert to begin with because -- I'm getting emotional.  
15 Sorry. I have children and I'm a mom, and I care deeply about  
16 the community at the Blue Ridge library, and I've come to know  
17 the children and the families who come there. And I had a  
18 very strong sense that this issue fell into a very gray area  
19 for the library system.

20 MR. O'CONNOR: Judge, I'm going to object to this  
21 response to the question. The question was what she told her  
22 husband.

23 THE COURT: I think she's going to get us a glass of  
24 water here real quick.

25 THE WITNESS: Okay.

1 THE COURT: Ms. Moore, would you reask your  
2 question, ma'am.

3 MS. MOORE: Sure.

4 Q (BY MS. MOORE) Did you report this incident to your  
5 husband as a police officer?

6 A Initially, no. I reported it to him because I consider  
7 him to be a subject matter expert on things that I know  
8 nothing about, and I wanted to get his advice on what could be  
9 done.

10 Q Did -- after you reported it to your husband, did then  
11 he take a police report about it?

12 A Yes, he did.

13 Q Okay. Thank you. And did you report it to your husband  
14 the same day as it occurred?

15 A I did. I reported it to him that evening. We discussed  
16 it.

17 Q And you -- do you know your husband in fact did file a  
18 police report and contacted the detective unit? Is that fair  
19 to say?

20 A Yes, he did.

21 MS. MOORE: I think that's all the questions I have,  
22 Your Honor.

23 MR. O'CONNOR: No questions. Thank you.

24 THE COURT: You may step down, ma'am.

25 May this witness be excused?



1 MR. O'CONNOR: Yes.

2 MS. MOORE: Yes.

3 (Witness excused.)

4 THE COURT: Officer Atwood, if you would come all  
5 the way up front, sir.

6 MITCHELL S. ATWOOD, being duly sworn by the courtroom deputy,  
7 testified:

8 DIRECT EXAMINATION BY MS. MOORE:

9 Q Please state your name for the record.

10 A Mitchell S. Atwood.

11 Q Where are you employed?

12 A Kansas City, Missouri, Police Department.

13 Q How long have you been employed at the Kansas City,  
14 Missouri, Police Department?

15 A 27 years.

16 Q What job responsibilities do you have at the police  
17 department?

18 A I am a patrol officer and currently drive a wagon for  
19 2030 sector relief.

20 Q Prior to this last assignment, can you just give us a  
21 breakdown of -- a brief breakdown of some of your previous  
22 assignments.

23 A I was on the bike patrol that started in Kansas City.  
24 Then they went to a CAN Center, the Community Action Network  
25 Center. We did that. Then they went to a community action

1 team, which worked with, of course, the members of the  
2 community, community groups, and was on that -- it was a  
3 proactive assignment -- for close to ten years, and then moved  
4 back into patrol.

5 Q Have you taken a number of different reports over the  
6 course of your career?

7 A Yes.

8 Q And in this particular instance, did your wife, Debbie  
9 Atwood, report something to you?

10 A Yes, she did.

11 Q And based on what she reported to you, did you feel like  
12 you needed to take a report?

13 A Yes.

14 Q And why is that?

15 A Because I believed when she explained what she had  
16 found, it -- to me it met the elements of a crime; so I was  
17 obligated to report that.

18 Q So the fact that she was your wife really had no -- made  
19 no difference whether you had to report it or not?

20 A No, no.

21 Q If another citizen would have reported that, would you  
22 have also made a police report?

23 A Yes.

24 Q And your wife, Debbie Atwood, was employed at the Blue  
25 Ridge library branch at the time?

1       A       Yes.

2       Q       We've heard from Debbie. Can you just briefly tell us  
3 just what you took down in the report or why you made the  
4 report.

5       A       It was -- I worked that day, and I got home, I think,  
6 around six or so. And she come back in from work and was  
7 there and explained to me that they had found some materials  
8 at a printer, that the printer had malfunctioned during the  
9 day so like only half of the job had been printed. Then it  
10 printed the rest of the job and when she -- I think when she  
11 was cleaning up, she found the pages and what was on them and  
12 kind of turned them in. Then when she got home to me, she was  
13 upset about it; so she explained to me what she had found.

14      Q       And did she explain to you what she had viewed depicted  
15 a boy between what she --

16               MR. O'CONNOR: Judge, I'm going to object. One, the  
17 prosecutor is leading. Two, his conversation with his wife is  
18 hearsay, out-of-court statement offered in court for the truth  
19 of the matter.

20               THE COURT: Leading sustained. The second part is  
21 overruled. Can you just ask him to describe the conversation.

22               MS. MOORE: Sure.

23      Q       (BY MS. MOORE) Could you describe what image your wife  
24 saw or images.

25      A       Yes. I believe she explained it was kind of like anime,  
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1 I guess, like a cartoon, and that one frame or so depicted a  
2 young male. I don't know -- I don't have the report, but  
3 around fivish or so, a young child, with a female adult, and I  
4 believe doing some sex acts and in the course of that would be  
5 calling her mommy. So -- and something like that really upset  
6 her more.

7 Q And if I -- I'm referring to your police report. If the  
8 report said depicted what she thought was a boy between six to  
9 ten years old, does that sound --

10 A Yeah, okay, yeah.

11 Q Does that sound fair?

12 A A child, yes.

13 Q So based on that, you filed a police report?

14 A Yes.

15 Q And did you contact or attempt to contact any detective?

16 A Yes. I think a friend of mine that I went through the  
17 academy with works the vice unit and I contacted him.

18 Q After you completed your police report, does that get  
19 sent to then a detective unit?

20 A Yes. For -- then they transfer it over to whoever's  
21 going to take the case, and then they start investigating it.

22 Q And other than filing the police report, did you have  
23 anything else to do with this case?

24 A No.

25 MS. MOORE: That's all the questions I have, Your  
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1 Honor.

2 MR. O'CONNOR: No questions. Thank you.

3 THE COURT: May this witness be released?

4 MR. O'CONNOR: Yes, sir.

5 THE COURT: Thank you, sir.

6 THE WITNESS: Thank you, sir.

7 (Witness excused.)

8 MS. MOORE: Your Honor, the government calls  
9 Geraldine Haile.

10 THE COURT: Ms. Haile, if you could come all the way  
11 to the front here.

12 GERALDINE HAILE, being duly sworn by the courtroom deputy,  
13 testified:

14 DIRECT EXAMINATION BY MS. MOORE:

15 Q Please state your name for the record.

16 A Geraldine Haile.

17 Q Can you spell your first and last name, please.

18 A First name is G-e-r-a-l-d-i-n-e. My last name is  
19 spelled H-a-i-l-e.

20 Q And, Ms. Haile, where are you employed?

21 A The Mid-Continent Public Library, Blue Ridge branch.

22 Q How long have you been employed at the Blue Ridge  
23 branch?

24 A A little more than 18 years.

25 Q What are your duties there at the branch?

1       A       I'm the branch manager; so I hire and fire staff. I  
2       make sure that the branch is running correctly. I delegate  
3       duties to people who order supplies and work the desk, manage  
4       the procedures that we have.

5       Q       Can you tell us a little bit about the computers in your  
6       library and how they're used by the community and how people  
7       are able to access the computers.

8       A       We have 24 computers at four computer pods. We have  
9       three express computers toward the front of the building, but  
10      the ones that are most used are the 24 computers that are on  
11      the northeast side of our branch. The public uses them for  
12      just about anything, typing documents, applying for jobs,  
13      uploading resumes. A lot of people are on Facebook. They use  
14      them for whatever you would use your home computer for.

15               There are a lot of people that print at our branch.  
16      We -- I think we print more things at the Blue Ridge branch  
17      than any other branch in the system.

18      Q       And are people able to essentially access any site on  
19      the Internet on those computers?

20      A       If they have unfiltered access, then they have access to  
21      most of the things on the Internet, I believe.

22      Q       So explain who has filtered access.

23      A       Anyone under 18. Well, when you sign on to the  
24      computer, you use your library card, which has a unique  
25      number, and your pin is your date of birth. And so people

1 type in their card number, their date of birth, and if they  
2 are under 18 years of age, they don't have a choice. They  
3 have filtered access. Anyone else 18 and over when they put  
4 in their library card number and their date of birth, then the  
5 computer gives them the choice of filtered or unfiltered  
6 access.

7 Q And so with filtered access, what things can't you see  
8 or can't you do?

9 A With filtered access, I believe there are many stop  
10 words that are built into our computer system that would  
11 prevent people from going to certain sites, some of them even  
12 academic sites. If you use certain words, you wouldn't be  
13 able to go there.

14 Q And unfiltered access means?

15 A I believe there's still some stop words, but not as many  
16 in that, again, people can go to many different sites.

17 Q So on July 11th of 2013, did you receive notice that  
18 someone had inappropriately used a computer there at the Blue  
19 Ridge branch?

20 A If you mean July 11th, 2017 --

21 Q Oh, what did I say?

22 A You said 2013. That's okay.

23 Q I don't know why I said that. Thank you.

24 A I just want to make sure I'm testifying to the right  
25 date.

1           I had gone to a meeting at our headquarters, and  
2 when I came back in the late afternoon, I was told that  
3 someone had printed out objectionable images.

4       Q     Did you view those images?

5       A     I looked at about five or six pages.

6       Q     In any of those images, did you -- well, tell us what  
7 you viewed -- what you saw in those images.

8       A     What I saw were some color printouts that indicated to  
9 me there were adults and children engaged in sexual activity.

10           MR. O'CONNOR: Judge, I would have the same  
11 objection.

12           THE COURT: Noted.

13           MR. O'CONNOR: Thank you, sir.

14       Q     (BY MS. MOORE) So what did you do with all of those  
15 images then?

16       A     I took them away from the desk. I took them to my  
17 office. I counted them and I put them in an envelope. And  
18 the next day I took them to our headquarters so that my boss,  
19 who is an associate director for public services, and her  
20 boss, who is the customer experience officer, could look at  
21 them and decide what they thought about them, and then what  
22 they told me to do was take them to the police department and  
23 to file a police report.

24       Q     And did you do that?

25       A     I did that.



1 Q Do you know what date you went to the police department?

2 A I went on July 13th.

3 Q And what police department did you go to?

4 A I went to the South Patrol Office of the Kansas City  
5 Police Department.

6 Q When you were at the South Patrol Division, did you meet  
7 with an officer?

8 A I met with officer, I believe, Joe Miller, and he took a  
9 look at the -- a brief look at the pictures that I recall and  
10 took a report from me.

11 Q And did you give him all of the images that the library  
12 was in possession of?

13 A Yes.

14 Q After providing the Kansas City, Missouri, Police  
15 Department with all the images, did you do anything else in  
16 relation to further investigation or anything of that nature?

17 A I let Officer Miller know that the library operates  
18 under privacy laws set by the state of Missouri and that if  
19 they wanted to investigate further, they could do that by  
20 providing the correct court order or subpoena for the records.  
21 But I believe that's all that I did.

22 Q And you gave him all of the images?

23 A I gave him all --

24 Q That were printed out that is?

25 A That is correct.

1 MS. MOORE: Thank you very much. I have no further  
2 questions of this witness.

3 MR. O'CONNOR: No questions. Thank you.

4 THE COURT: May this witness be excused?

5 MS. MOORE: Yes, Your Honor.

6 MR. O'CONNOR: Yes, Your Honor.

7 THE COURT: Thank you.

8 (Witness excused.)

9 MS. MOORE: Your Honor, the government calls Police  
10 Officer Joe Miller.

11 JOSEPH MILLER, being duly sworn by the courtroom deputy,  
12 testified:

13 DIRECT EXAMINATION BY MS. MOORE:

14 Q Please state your name for the record.

15 A Joseph Miller.

16 Q Where are you employed?

17 A With the Kansas City, Missouri, Police Department South  
18 Patrol.

19 Q How long have you been employed with the Kansas City,  
20 Missouri, Police Department?

21 A Approximately eight years.

22 Q What are your duties with the police department?

23 A I'm a patrol officer where I handle 911 calls.

24 Q On July 13th of 2017, did you receive a 911 call to  
25 report to the station?

1       A       Yes.

2       Q       And tell us how that works.  Why would you be dispatched  
3 to -- back to the station?

4       A       There's certain -- if, say, a citizen comes in and wants  
5 to make a police report, if it's a report that a desk clerk  
6 cannot take like if it's not an accident or a stealing, an  
7 officer has to come take the report.  So we go meet the  
8 citizen at the station.

9       Q       Is that then what you did on July 13th, 2017?

10      A       Yes.

11      Q       Who did you meet with?

12      A       It was a Ms. Haile.  I believe she was the supervisor at  
13 Mid-Continent Library.

14      Q       And that's the Blue Ridge branch library; is that  
15 correct?

16      A       Yes.

17      Q       Is that located in Kansas City, Missouri?

18      A       Yes.

19      Q       When you went to the station and met with Ms. Haile,  
20 what did she tell you?

21      A       She said that the day before one of her employees had  
22 contacted her and said one of the patrons at the library had  
23 came in and was working on one of the computers and printed  
24 off some photos or some pictures on one of the copiers, color  
25 copiers, that the citizen had came up, took the copies off the

1 printer and left and that she noticed that it was out of  
2 toner. She changed the toner and more copies came out. She  
3 picked them up and looked at them and saw that they were not  
4 appropriate pictures. So she contacted her supervisor, which  
5 was Ms. Haile, and Ms. Haile had brought the pictures to the  
6 station to file a report.

7 Q Okay. When she brought the pictures to the station to  
8 file a report, did you take a report?

9 A Yes.

10 Q And did you recover the images?

11 A Yes.

12 Q I'm going to show you just for identification  
13 purposes --

14 MS. MOORE: If I may approach.

15 Q (BY MS. MOORE) -- Government's Exhibit No. 2, and if you  
16 could tell us what that is.

17 A This is the envelope that I recovered the copies of the  
18 photos that she brought in. These are my initials, my serial  
19 number, the date, and the case report number.

20 Q And then if you will just look inside. We won't publish  
21 these to the jury yet, Your Honor, but are these in the same  
22 or substantially the same condition as when you recovered  
23 them?

24 A Yes, uh-huh.

25 Q And would you describe it as color copy images?

1 A Yes.

2 Q All right. Thank you very much.

3 After recovering the images from Ms. Haile, did you  
4 submit a police report?

5 A Yes.

6 Q Does that then go to a detective unit for investigation?

7 A Correct.

8 Q Did you do anything then related to this case?

9 A No.

10 MS. MOORE: All right. That's all the questions I  
11 have with this witness, Your Honor.

12 MR. O'CONNOR: No questions. Thank you, Officer.

13 THE COURT: This officer may be released?

14 MS. MOORE: Yes. Thank you, Your Honor.

15 MR. O'CONNOR: Yes.

16 (Witness excused.)

17 MS. MOORE: May we approach?

18 THE COURT: Yes.

19 (Counsel approached the bench and the following  
20 proceedings were had:)

21 MS. MOORE: So I really just have two more  
22 witnesses, and these are the witnesses I would probably offer  
23 the images through to the jury. So just wanted to let you  
24 know that. I don't know if you had a chance to look at all  
25 the images I intend to offer, if you want to make an

1 objection, just a general objection, if you want to take a  
2 break.

3 THE COURT: How about we take a break.

4 (The proceedings returned to open court.)

5 THE COURT: Ladies and gentlemen of the jury, this  
6 is a good time for a break. We'll take about a 15-minute  
7 break. So we'll have you back in here at 3:20, and at that  
8 time the government will put another witness on. Do not talk  
9 about this case. Do not do any research on this case. See  
10 you back at 3:20.

11 (The following proceedings were had out of the  
12 presence of the jury:)

13 THE COURT: We are outside the presence of the jury.  
14 I understand the next two witnesses will be the witnesses who  
15 will use the exhibits of these anime. You want to state an  
16 objection on the record or --

17 MR. O'CONNOR: Judge, the objection I would have is  
18 the images, I think, Teresa has ferreted these out, but the  
19 images that were printed off that the defendant did not  
20 receive, he never possessed or received those, although I know  
21 there are some that are duplicates that were at his house.  
22 I'm only talking about the ones that weren't at his house that  
23 printed of which he never possessed or received. Therefore,  
24 under the -- basically the instructions that he never -- the  
25 opening element is that he possessed or received those

1 documents, he never did because he left the library.

2 MS. MOORE: And I guess my response to that would be  
3 that he constructively possessed them because he viewed them  
4 and printed them. However, these are the ones from his home,  
5 and I do intend to have the next witness identify this pack.  
6 This is Exhibit 3 and then --

7 MR. O'CONNOR: Is that Hille?

8 MS. MOORE: Yes. And then I will publish a limited  
9 number of them to the jury, and then separately we can mark  
10 those as 3A, and then those could go back to the jury.

11 MR. O'CONNOR: You mean the ones that she got at the  
12 house?

13 MS. MOORE: Right.

14 MR. O'CONNOR: Yes.

15 MS. MOORE: Yes. Does that make sense?

16 THE COURT: Yeah. So I understand at least 3A,  
17 those were at his house. So your objection about possession  
18 doesn't relate to Exhibit No. 3; is that correct?

19 MR. O'CONNOR: That's correct.

20 THE COURT: So then will that objection relate to  
21 those recovered from Exhibit No. 2?

22 MS. MOORE: And I did not offer 2. I will have  
23 detective -- Task Force Officer Albers testify that he's  
24 reviewed the pack from the house and the pack from the library  
25 and that there were identical ones to show -- because they

1 printed off everything at the library to show in fact he did  
2 take some home from the library. But I'm offering from the  
3 pack that were recovered from the house.

4 THE COURT: So the only ones we're going to be  
5 showing are from Exhibit No. 3. So we know that he physically  
6 possessed those, not just possessed them on the computer but  
7 he possessed a printed copy.

8 MS. MOORE: Right.

9 MR. O'CONNOR: And you're not offering 2?

10 MS. MOORE: I don't think I'll offer two other than  
11 as for Detective Albers to say he compared them, and certainly  
12 some that were printed at the library are in this pack.

13 MR. O'CONNOR: Correct. As long as you make that  
14 distinction so they're not all just the ones that were at the  
15 house, were some of the same but not all were.

16 MS. MOORE: Okay, okay.

17 MR. O'CONNOR: That's fair.

18 MS. MOORE: Fair enough.

19 THE COURT: Yeah. We'll take a quick break. Two  
20 more witnesses. And you still think you'll be done today,  
21 Ms. Moore?

22 MS. MOORE: Oh, yes, absolutely.

23 THE COURT: And still thinking we'll do closing  
24 arguments 9 a.m. tomorrow morning?

25 MR. O'CONNOR: I've got a retired agent coming at  
72



1 8:30.

2 THE COURT: Mr. Buie, I'm going to ask you some  
3 questions, please. Please listen to your lawyer on any  
4 objections.

5 But, sir, you heard Mr. O'Connor tell us that you  
6 are not going to testify.

7 THE DEFENDANT: That's correct.

8 THE COURT: And you've had conversations with  
9 Mr. O'Connor about your right not to testify; is that true?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And you understand ultimately it is your  
12 decision whether to testify or not to testify; is that true?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: And you have made the decision based  
15 upon advice of counsel to not testify?

16 THE DEFENDANT: That's correct.

17 THE COURT: And you understand that's your  
18 constitutional right?

19 THE DEFENDANT: I do, sir.

20 THE COURT: Ms. Moore, is there anything you'd like  
21 me for me to follow up with other than those questions?

22 MS. MOORE: That's all the government would ask,  
23 Your Honor.

24 THE COURT: And, Mr. O'Connor, anything you'd like?

25 MR. O'CONNOR: No, Judge. Thank you.

1 THE COURT: We'll see you back in here in about ten  
2 minutes.

3 (A recess was taken.)

4 (The following proceedings were had out of the  
5 presence of the jury:)

6 THE COURT: Are you ready to bring the jury back in,  
7 Ms. Moore?

8 MS. MOORE: Yes, thank you, Your Honor.

9 THE COURT: Nothing from Mr. O'Connor?

10 MR. O'CONNOR: No.

11 THE COURT: All right.

12 (The following proceedings were had in the presence  
13 of the jury:)

14 THE COURT: Ms. Moore, would you call your next  
15 witness, please.

16 MS. MOORE: Thank you, Your Honor. The United  
17 States calls Sandra Hille.

18 THE COURT: Officer Hille, if you would please come  
19 all the way up here to the front, ma'am.

20 SANDRA HILLE, being duly sworn by the courtroom deputy,  
21 testified:

22 DIRECT EXAMINATION BY MS. MOORE:

23 Q Please state your name for the record.

24 A Sandra Hille.

25 Q Are you a federal officer?

1 A Yes.

2 Q How long have you been a federal officer?

3 A For 12 years.

4 Q Have you had contact with the defendant in this case,  
5 David Buie?

6 A Yes.

7 Q And over the last couple of years, have you just had  
8 some regular contact with Mr. Buie?

9 A Yes.

10 Q I want to -- when did you first meet Mr. Buie?

11 A I believe it was October 2014.

12 Q Okay. And I want to direct your attention to some  
13 events that occurred in July of 2017. On July 12th of 2017,  
14 were you notified about an incident with Mr. Buie that had  
15 occurred at the Mid-Continent Public Library Blue Ridge  
16 branch?

17 A I was.

18 Q How were you notified, do you recall?

19 A I was called by Detective Albers.

20 Q When you were notified by Detective Albers about the  
21 incident at the branch, did you respond to Mr. Buie's home?

22 A The following day, yes.

23 Q Do you know when you went out to the home, what time?

24 A 8:30 a.m.

25 Q And was Mr. Buie there at the home?

1 A He was.

2 Q Does Mr. Buie -- is he employed?

3 A I believe he's retired.

4 Q Do you know what he retired from?

5 A My best recollection is I believe he was an attorney  
6 possibly for the city.

7 Q What address did you respond to?

8 A It was on Ewing. Let me look up the exact address.  
9 10719 Ewing, Kansas City, Missouri 64134.

10 Q Is that in the Western District of Missouri?

11 A Yes.

12 Q Did you have face-to-face contact with Mr. Buie there at  
13 his home on July 13?

14 A I did.

15 Q And did Mr. Buie provide consent to search his home on  
16 that date?

17 A He did.

18 Q Did you go out to his home with anyone else?

19 A Yes, another federal officer.

20 Q During your search of Mr. Buie's home, did you locate  
21 some printed images?

22 A I did.

23 Q Where were those located?

24 A On the kitchen table.

25 Q Did you question Mr. Buie, the defendant, about what had

1 occurred at the library?

2 A I did.

3 Q And what did the defendant tell you about libraries?

4 A He indicated that since March of 2017, he had been  
5 frequenting local libraries. He pointed out four specific  
6 libraries. I believe he said the Bannister, Red Bridge, Blue  
7 Ridge, and maybe the Grandview library on at least a weekly  
8 basis for the purpose of getting on their Internet capable  
9 devices and viewing child porn anime.

10 Q And when you say child pornography anime, describe what  
11 you mean by that.

12 A Images of children being sexually abused in a cartoonish  
13 manner.

14 Q Did Mr. Buie indicate -- or what did he tell you about  
15 actually being able to look at those images on library  
16 computers?

17 A He said he was successful of doing this because he would  
18 continually go back on a weekly basis to reengage in the  
19 activity.

20 Q What did Mr. Buie tell you about being able to print  
21 images at the library?

22 A He indicated that sometime in the spring of 2017 -- he  
23 had difficulty narrowing it down to an exact date -- that a  
24 library patron had complained because they had -- they had  
25 observed him viewing the child porn anime, and he also

1 admitted that he had attempted to print the material on  
2 several occasions.

3 Q Did Mr. Buie indicate what library he was at when a  
4 patron complained about him?

5 A Yes, he did.

6 THE COURT: Ma'am, do you need a drink of water?

7 A JUROR: I'm sorry.

8 THE COURT: That's okay. Would you pour a little  
9 cup for her, please. Do you need a cough drop?

10 A JUROR: I've got some.

11 THE COURT: Okay. I have some if you need one.

12 Thank you, ma'am.

13 A He indicated that that specific occasion occurred at the  
14 Red Bridge library branch.

15 Q (BY MS. MOORE) Did -- when Detective Albers contacted  
16 you, that was the -- about the incident at the Blue Ridge  
17 branch; is that correct?

18 A I believe so, yes.

19 Q Did Mr. Buie tell you that he was asked to leave the Red  
20 Bridge branch library?

21 A In that incident, yes, in the spring of 2017.

22 Q In the earlier incident?

23 A Yes.

24 Q And did Mr. Buie admit that he was viewing child  
25 pornography anime or images of children and printing them at

1 the library?

2 A He did.

3 Q I'm going to show you Government's Exhibit No. 3.

4 MS. MOORE: If I may approach, Your Honor.

5 THE COURT: Yes.

6 Q (BY MS. MOORE) And what is Government's Exhibit 3?

7 A It is the stack of images that I retrieved from  
8 Mr. Buie's residence on July 13th, 2017.

9 Q Can you just describe generally what the stack contains.

10 A The stack contains numerous images of in a cartoon  
11 manner, an anime manner of minors engaging in sexual activity  
12 with adults.

13 MR. O'CONNOR: Judge, again, same objection.

14 THE COURT: Noted.

15 MR. O'CONNOR: Thank you, sir.

16 Q (BY MS. MOORE) What's the general tenor of -- are there  
17 also words on these cartoons?

18 A There is.

19 Q What's kind of the general tenor of these images if  
20 there is one?

21 A I mean, in looking at them as a whole, it appears to be  
22 images of children, and I'm specifically looking at ones where  
23 they appear to be very young engaging in sexual activity with  
24 adults. And it appears to be their parents.

25 Q Okay.

1       A       It would be my opinion they appear to be in a  
2 parent-like nature.

3       Q       Do some of the cartoons use words like "mom" and "dad"?

4       A       I'll have to look through here for a second.

5       Q       And that's okay. You don't have to. That's fine. I'll  
6 withdraw that question.

7               What did you do -- so after you obtained these  
8 images from Mr. Buie's home, what did you do?

9       A       I took possession of them, and I contacted Detective  
10 Albers and completed a chain of custody form and gave them  
11 over to his custody.

12      Q       Did you go meet Detective Albers?

13      A       I did at FBI headquarters that afternoon -- late that  
14 morning.

15      Q       And transferred them to Detective Albers?

16      A       Correct.

17      Q       And you did not keep any for your file?

18      A       No.

19              MS. MOORE: If I may have one minute, Your Honor.

20              All right. That's all the questions I have.

21              MR. O'CONNOR: No questions. Thank you.

22              THE COURT: May this witness be released?

23              MR. O'CONNOR: Yes.

24              THE COURT: Thank you, ma'am.

25              THE WITNESS: Thank you.



1 (Witness excused.)

2 MS. MOORE: At this time, Your Honor, the government  
3 calls -- if I may, sorry -- Task Force Officer David Albers.

4 DAVID ALBERS, being duly sworn by the courtroom deputy,  
5 testified:

6 DIRECT EXAMINATION BY MS. MOORE:

7 Q Please state your name for the record.

8 A David Albers.

9 Q Where are you employed?

10 A I am employed by the Kansas City, Missouri, Police  
11 Department, assigned to the FBI Child Exploitation Task Force.

12 MS. MOORE: I'm sorry. If I can just have one --  
13 thank you.

14 Q (BY MS. MOORE) So when you're assigned to the FBI Child  
15 Exploitation Task Force, where do you actually work out of?

16 A Out of the FBI offices here in Kansas City.

17 Q How long have you been with the Kansas City, Missouri,  
18 Police Department?

19 A 20 plus years.

20 Q What unit -- I think you said the child exploitation  
21 task force. How long have you been employed with that unit?

22 A Little over five years, and prior to that, I was  
23 investigating crimes against children for seven years before  
24 that.

25 Q Have you had specialized training in investigating

1 crimes against children and child exploitation cases?

2 A Yes.

3 Q I want to direct your attention to a case that occurred  
4 at the Blue Ridge library. Were you notified about an  
5 incident that occurred on the -- at the Blue Ridge library on  
6 July 11th, 2017?

7 A I was.

8 Q And do you recall how you were notified about that?

9 A Actually my coworker, the other Kansas City task force  
10 officer at the time, had received a call from Officer Atwood  
11 relaying the information that he received, and he passed -- my  
12 coworker passed that information on to me.

13 Q That was -- essentially you were able to get the police  
14 report that Officer Mitchell filed; is that correct?

15 A Correct.

16 Q Is that how things go in the normal course of business,  
17 a police officer -- a patrol officer takes the report and then  
18 it's assigned to an investigative unit?

19 A Yes.

20 Q Is the Blue Ridge public library branch located in the  
21 Western District of Missouri?

22 A It is.

23 Q And what did you do once you received the information  
24 about what had occurred there on July 11th, 2017?

25 A The information that was passed on to me, I did vaguely

1 recognize the name; so then I began trying to figure out why I  
2 knew the name. And --

3 Q Oh, I'm sorry. Can we have one minute.

4 (Counsel approached the bench and the following  
5 proceedings were had:)

6 MS. MOORE: I need to stop this line of questioning.  
7 This is not where I was going.

8 MR. O'CONNOR: I understand.

9 MS. MOORE: So I will just -- if you don't mind if I  
10 just lead through this part.

11 MR. O'CONNOR: Well, I'd have to object for the  
12 record. I mean, I think the bell's kind of already been rung.  
13 I'd move for a mistrial. I believe that him saying he had a  
14 familiarity with the name could only bring the jury to believe  
15 that there's some other incident involving Mr. Buie. I don't  
16 know how you unring the bell.

17 THE COURT: The motion for mistrial is denied. I'll  
18 instruct you in front of the jury to ask another question, and  
19 you can lead for a series of questions and get us out of this.

20 MS. MOORE: Uh-huh.

21 (The proceedings returned to open court.)

22 THE COURT: Ms. Moore, will you ask another  
23 question, ma'am.

24 MS. MOORE: Yes. Thank you, Your Honor.

25 Q (BY MS. MOORE) So when you received the information from

1 the Blue Ridge branch library, did you contact another federal  
2 agent?

3 A Yes.

4 Q Okay. And is that Sandra Hille?

5 A It is.

6 Q And did you provide the information about the July 11th  
7 incident to Sandra Hille?

8 A Yes.

9 Q After you provided the information to Sandra Hille, did  
10 you then meet with her?

11 A I did.

12 Q What did Ms. Hille provide to you?

13 A She provided me the packet of the printouts that she  
14 recovered from Mr. Buie's residence when she went out there to  
15 contact him.

16 Q And did you recover the printed images?

17 A Yes.

18 Q And I'm going to show you Government's Exhibit No. 3 and  
19 just ask you if they are in the same or substantially the same  
20 condition as when you recovered the printed images?

21 A Okay. They are.

22 Q Did you review the images that were recovered by Sandra  
23 Hille?

24 A Yes.

25 Q Did you also review the images that were recovered -- or

1 were you able to obtain those from the Blue Ridge library  
2 branch?

3 A Yes.

4 Q That were recovered by Officer Miller, correct?

5 A Correct.

6 Q Okay. Did you compare the images recovered from Sandra  
7 Hille with the images that Officer Miller recovered from  
8 Geraldine Haile, the library branch manager?

9 A Yes.

10 Q Were some of the images the same, identical?

11 A They were.

12 Q That were printed at the library and then recovered from  
13 Mr. Buie's home?

14 A Correct.

15 Q Have you actually gone out to that library and seen the  
16 computer area out there?

17 A Yes.

18 Q And did you take the photographs that have been admitted  
19 into evidence here today?

20 A Yes.

21 Q Did you take those photographs when the library was  
22 essentially closed so that there were no patrons there?

23 A Yes.

24 Q Based on your training and experience, did the images  
25 that you recovered, were they transported in interstate

1 commerce, that is, by computer?

2 A Yes.

3 MS. MOORE: And if I may, Your Honor, I'd like to  
4 publish some of the images to the jury.

5 THE COURT: Yes.

6 Q (BY MS. MOORE) And let me ask you this before I do that,  
7 when you were reviewing the images, did they have a similar  
8 theme?

9 A Yes, they did.

10 Q And --

11 MS. MOORE: Do you want to see them before I --

12 MR. O'CONNOR: I've seen them. Thank you.

13 Q (BY MS. MOORE) What was the general theme of the images?

14 A Basically it portrayed a mother and son sexual  
15 relationship.

16 Q And I'm putting up different images right now that we're  
17 showing to the jury. This particular image, can you just  
18 briefly describe what that is.

19 A I recognize the boy as being a character in a Peter Pan  
20 movie, and the text that goes along with that is he's  
21 referring to her as mom.

22 Q Okay. Do the images depict sexually explicit conduct,  
23 that is, sex acts occurring between the characters in the  
24 images?

25 A Yes.

1 Q Do the words typically discuss the relationship between  
2 a mother and a son?

3 A Yes.

4 Q This next image is -- and these are all colored images,  
5 cartoons, graphic cartoons would you describe them for the  
6 most part?

7 A I'm sorry. Say that again.

8 Q Are the images all, just for the record so we have it  
9 clear, printed, colored images of graphic cartoons depicting  
10 these different actions?

11 A Yes.

12 Q This one's a little different. Was this -- this one is  
13 a black and white image; is that correct?

14 A Yes.

15 Q And then these particular images, do -- do most of the  
16 images tell some type of, for lack of a better term, story or  
17 events that are occurring between the characters?

18 A They do.

19 Q And in this particular series of images, again, is this  
20 a mother with a son?

21 A Yes.

22 Q In this series, is the son essentially going to the  
23 mother to hide? Someone's -- family's looking for him?

24 A Yes.

25 Q And do they depict sexual activity between both parties?

1 A They do.

2 Q And, again, is this depicting -- this picture depict a  
3 mother and son?

4 A Yes.

5 Q All right. Thank you.

6 From your training and experience, do some -- well,  
7 let me ask you this: From your training and experience, are  
8 images like this available on the Internet?

9 A They are.

10 Q Okay. And are these images something that is -- you can  
11 also find other illegal activity on the Internet; is that  
12 correct? Fair statement?

13 A Yes.

14 Q Has the Internet become a basis for individuals to  
15 obtain essentially what they want, so to speak?

16 A Yes.

17 Q Once you recovered these images, what did you do with  
18 the case?

19 A The -- everything was compiled, and then it was  
20 submitted to the United States Attorney's Office.

21 Q To make a determination of filing charges?

22 A Yes.

23 Q When -- and let me ask you this if you know this: Do  
24 some -- have you had a lot of training on child exploitation  
25 cases and cases on the Internet essentially?



1       A       Yes.

2       Q       And is it fair to say that some websites are more  
3 difficult to find than others?

4       A       That would be correct.

5       Q       And is it also fair to say that sometimes the websites  
6 are more difficult to find than others because, for instance,  
7 the name of the website does not accurately necessarily depict  
8 what the website's there for; is that correct?

9       A       That's correct.

10      Q       Sometimes websites will have names to essentially avoid  
11 law enforcement detection; is that fair to say?

12      A       Yes.

13      Q       And the website is certainly the use of the Internet --  
14 website -- when one goes to websites, you're using the  
15 Internet, correct?

16      A       Yes.

17      Q       And that's a manner of interstate commerce?

18      A       That's correct.

19              MS. MOORE: All right. That's all the questions I  
20 have, Your Honor.

21              MR. O'CONNOR: No questions, Judge. Thank you.

22              MS. MOORE: Prior to that, I would move for  
23 admission of Government's Exhibit 3A.

24              MR. O'CONNOR: General objection, Judge.

25              THE COURT: Objection overruled. 3A is admitted.

1 Sir, you may step down. Thank you.

2 MS. MOORE: And at this time the government rests.

3 MR. O'CONNOR: Can we approach, Judge?

4 THE COURT: Yes.

5 (Counsel approached the bench and the following  
6 proceedings were had:)

7 MR. O'CONNOR: At this time we file a motion for  
8 judgment of acquittal at the close. I put that on the ECF. I  
9 just wanted to give it today in case you wanted to read it.  
10 So she rests. Then I'm going to rest. So then I'll bring up  
11 another motion just like this that reads the same.

12 THE COURT: Okay. I'm going to hold off on ruling  
13 on this until we get the jury out of here. Then you can give  
14 me some oral argument on it.

15 MR. O'CONNOR: Yeah. Then I'm hoping to put Alvey  
16 on and convince you to potentially -- not his testimony but  
17 you said preliminarily you're not.

18 THE COURT: Right, right.

19 (The proceedings returned to open court.)

20 THE COURT: Mr. O'Connor.

21 MR. O'CONNOR: At this time, Judge, the defendant  
22 rests.

23 THE COURT: Very good. Ladies and gentlemen of the  
24 jury, that concludes the evidence that you're going to be  
25 hearing in this case. We have some issues to take up. We're

1 going to start back up at 9 a.m., and at that time I will read  
2 you some additional jury instructions. You're going to hear  
3 closing arguments by both of the attorneys, and then the case  
4 will be yours to decide.

5           During this recess and every other recess, do not  
6 discuss this case among yourselves or with anyone else,  
7 including your family and friends. Do not allow anyone to  
8 discuss this case with you or within your hearing. Do not  
9 discuss also means do not email, send text messages, blog, or  
10 engage in any other form of written, oral, or electronic  
11 communication as I've instructed you before.

12           Do not read any newspaper or other written account,  
13 watch any televised account, or listen to any radio program on  
14 the subject of this trial. Do not conduct any Internet  
15 research or consult with any other sources about this case,  
16 the people involved in this case, or its general subject  
17 matter.

18           You must keep your mind open and free of outside  
19 information. Only in this way will you be able to decide the  
20 case fairly based solely on the evidence and my instructions  
21 on the law. If you decide this case on anything else, you  
22 will have done an injustice.

23           It is very important that you follow these  
24 instructions. I may not repeat these things to you before  
25 every recess. Please keep them in mind until you are

1 discharged.

2 We will see you all at nine o'clock in the morning.

3 All rise.

4 (The following proceedings were had out of the  
5 presence of the jury:)

6 THE COURT: You may be seated. We're outside the  
7 presence of the jury at this time. We've got defendant's  
8 motion for judgment of acquittal at the close of the  
9 government's evidence. I'm assuming there's another one for  
10 the close of all evidence.

11 MR. O'CONNOR: Yes, Judge. I have it here.

12 THE COURT: Oh, it's right here. I've got one  
13 sitting here for me.

14 MS. MOORE: Oh, I had the close of all the evidence  
15 too. I don't have the other one.

16 THE COURT: I've got one of each now.

17 MR. O'CONNOR: Oh, you do. Okay, good. It's the  
18 same motion.

19 Judge, we basically would just stand on the motion  
20 as written. I think that the major argument is that the  
21 second element, which I don't think the government has proved  
22 beyond a reasonable doubt, that particular element, that  
23 minors are depicted and they're graphically sexual, relates to  
24 whether or not they're 18 years or younger. They are cartoons  
25 subject to interpretation. I believe the statute is

1 unconstitutional as written. I think it's overbroad.

2 I think it is -- it's hard to -- in this case I know  
3 he went to a public library. The items we believe he received  
4 were adult pornography which is not illegal and hopefully  
5 after our offer of proof in the morning with what we were able  
6 to buy at the bookstore, I think it's unclear as to what  
7 conduct constitutes the crime in this case. And so I think  
8 it's -- I think that will be our argument.

9 MS. MOORE: Your Honor, I -- there -- and I'm afraid  
10 I don't have any case law at my fingertips to cite, but the  
11 issue as to the constitutionality of the statute has been  
12 tested on different occasions, and it's been determined that  
13 it's not vague or overbroad. In this particular case the  
14 defendant actually obtained images from libraries, from the  
15 Internet. This was not a mere -- he didn't draw something in  
16 his home and possess it there.

17 These were images that one of the elements of the  
18 statute is that they traveled in interstate commerce or he  
19 obtained them from the Internet. He obtained them at  
20 libraries, possessed them at libraries, and then took them  
21 back to his home was the testimony.

22 The government believes and asserts that all of the  
23 witnesses testified -- the majority of witnesses -- that they  
24 were minors depicted in the images, and then the jury was able  
25 to see Government's Exhibit 3A, which has been admitted into

1 evidence, that depicts minors. And the testimony from  
2 Detective Albers or Task Force Officer Albers is that minors  
3 were depicted in those images. And I guess based -- I'm sorry  
4 to interrupt. I apologize for that.

5 THE COURT: Interrupting my silence?

6 MS. MOORE: Interrupting your concentration. Now  
7 that actually the defense has filed this motion, the  
8 information or the allegations set forth in the motion  
9 actually go, I think, beyond what the defendant indicated at  
10 the onset of the trial would be and which I think the court  
11 relied on in -- somewhat in the 404(b) ruling. So I would  
12 note that for the record.

13 THE COURT: I'm going to deny defendant's motion for  
14 judgment of acquittal at the close of the government's  
15 evidence and defendant's motion for judgment of acquittal at  
16 the close of all the evidence.

17 Mr. O'Connor, you've raised some complicated  
18 constitutional issues. As we look through the history of  
19 these statutes, the Ashcroft opinion, the Protect Act of 2003,  
20 the Child Pornography Prevention Act, all those lay out good  
21 legal research. I'm going to overrule them as well as the  
22 unconstitutionally vague as to what the term "minor" means in  
23 this case. While it's fictionalized, animated, character, my  
24 review of the animations would be that they are -- do depict a  
25 minor and that it's not vague as compared to these images, but

1 the vagueness challenge probably means I'm not supposed to be  
2 looking at the images and determining that -- what the statute  
3 means, determining that it's not vague and that it's not  
4 unconstitutionally overbroad. So that's my ruling on your two  
5 motions.

6 Let's talk about the jury instructions. Does  
7 everybody have those handy? I now have the citation version,  
8 which hopefully will help us figure out what we're discussing.  
9 We have joint proposed instructions and then, Mr. O'Connor,  
10 you've properly reserved the right to make some objections to  
11 some of those as well. As we're working through these, I  
12 understand that you want Defendant's Instruction 19, that  
13 there's no burden upon the defendant to prove he is innocent,  
14 to be a separate jury instruction and we would then remove it  
15 from any other portion, and we'll do that so that that's a  
16 separate instruction.

17 Are there others that you need a ruling on,  
18 Mr. O'Connor?

19 MR. O'CONNOR: No, Judge. Since there's not an  
20 Eighth Circuit instruction -- that basically I think Teresa  
21 did her best to put the instruction together, we would still  
22 object since there isn't an Eighth Circuit instruction.  
23 Absent that, I don't have any other objection.

24 THE COURT: And the Eighth Circuit instruction that  
25 is missing is just the ones that are cited as Instruction No.

1 20, which she's modified various instructions to come up with  
2 the possession of child obscenity.

3 MR. O'CONNOR: Yes.

4 MS. MOORE: That's correct, Judge.

5 THE COURT: I'm overruling that objection. I will  
6 send that on to Judge Knox for his review on the Eighth  
7 Circuit jury instruction on the criminal side so that he can  
8 potentially put that up for debate and use this little model  
9 to get through it.

10 As to No. 19, we'll be including -- since the  
11 defendant requests that the language, The fact the defendant  
12 did not testify must not be considered by you, that will be  
13 included in there as well; is that right, Mr. O'Connor?

14 MR. O'CONNOR: Yes, sir.

15 THE COURT: Okay. We'll be using that modified 17B  
16 because the defendant did not testify, which is Eighth Circuit  
17 Jury Instruction 3.04.

18 Any other issues with the jury instructions,  
19 Ms. Moore?

20 MS. MOORE: Judge, maybe I misheard or  
21 misunderstand. I thought it was 18 -- did you say 17B or 18B  
22 that was going to be modified to remove the burden, there's no  
23 burden upon the defendant to testify?

24 THE COURT: I've got a little flag here on 17B; so I  
25 may have misspoke. I think we're just adding that last



1 paragraph in 13.04, 17B about in deciding whether or not to  
2 believe a witness. You guys proposed 17A, and 17B is in the  
3 alternative. So we just picked 17B because the defendant did  
4 not testify, and your 17A was the 3.04 if he did testify.

5 MS. MOORE: Right. I'm sorry. Thank you. Okay. I  
6 think I was jumping ahead of myself. So the government would  
7 then -- and on 18B ask that that last paragraph be removed  
8 because the defendant is submitting a separate instruction.

9 MR. O'CONNOR: No objection to that.

10 MS. MOORE: Okay.

11 THE COURT: That is what we'll do. We'll have the  
12 last paragraph in 18B, which is based on Eighth Circuit Jury  
13 Instruction 3.05, to be that paragraph that starts out "the  
14 presumption of innocence alone is sufficient." That will be  
15 what comes in 18B, and that will be the last paragraph. And  
16 then the next jury instruction will be 19, a separate jury  
17 instruction, that says, There is no burden upon the defendant  
18 to prove that he is innocent.

19 MS. MOORE: Okay. Thank you, Judge.

20 THE COURT: Anything else, Ms. Moore?

21 MS. MOORE: I can't think of anything.

22 MR. O'CONNOR: How much time for argument?

23 THE COURT: You pick how long because you're going  
24 to be using some time on rebuttal. For a one-day trial, what  
25 do you think, sum it up in 30 seconds?

1 MS. MOORE: I think, frankly, 15 minutes should be  
2 plenty.

3 THE COURT: 15 minutes for the initial part and how  
4 much for rebuttal?

5 MS. MOORE: I would say 15 minutes total.

6 MR. O'CONNOR: Yeah.

7 MS. MOORE: And --

8 THE COURT: How about we say 15 and 5. I don't want  
9 to -- what I don't want is for you to get up there and start  
10 bumbling over, as lawyers tend to do, not you, and then we  
11 have to start worrying, Oh, you went 17 minutes. We'll do 15  
12 and 5. Would you like Tracy to give you any warnings?

13 MS. MOORE: You want to do a one-minute warning on  
14 both sections, that would be very kind. Thank you.

15 THE COURT: So you get 20 minutes for your closing,  
16 Mr. O'Connor.

17 MR. O'CONNOR: Yes, sir.

18 THE COURT: Would you like any warnings, sir?

19 MR. O'CONNOR: No. I can't imagine I'm going to  
20 talk 20 minutes. I appreciate it.

21 THE COURT: We'll give you a one-minute warning just  
22 in case you get to 19.

23 MR. O'CONNOR: Yeah. Thank you.

24 THE COURT: Is there anything else from either party  
25 on any matter before we reconvene at 8:30 with jury

1 instructions in your hand?

2 MR. O'CONNOR: And I'll have the offer of proof  
3 ready to go at 8:30.

4 THE COURT: Yes, sir. We can tee it up with them at  
5 nine o'clock.

6 MS. MOORE: All right. Thank you.

7 THE COURT: Thank you.

8 (Court adjourned at 4:12 p.m.)

9 END OF VOLUME I

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